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PART II—Section 2

Bills and Reports of Select Committees on Bills

HOUSE OF THE PEOPLE

The following Bills were introduced in the House of the People on 16th July, 1952:—

BILL No. 77 OF 1952

A Bill further to amend the Indian Penal Code, 1860.

BE it enacted by Parliament as follows:—

1. **Short title.**—This Act may be called the Indian Penal Code (Amendment) Act, 1952.

2. **Amendment of section 302, Act XLV of 1860.**—In section 302 of the Indian Penal Code, 1860 (XLV of 1860) and wherever else the words "transportation for life" occur in the said Code, the following shall be substituted, namely:—

"imprisonment of either description for a term which may extend to fourteen years".

STATEMENT OF OBJECTS AND REASONS

The punishment to which offenders are liable under the provisions of the Indian Penal Code are given in section 53 of the said Code and are as follows:—

First—Death,

Secondly—Transportation,

Thirdly—Penal Servitude,

Fourthly—Imprisonment which is of two descriptions, namely:—

1. Rigorous, that is with hard labour, and

2. Simple.

Fifthly—Forfeiture of property, and

Sixthly—Fine.

Transportation can be for any period and may even extend for life. It was intended to be a separate and distinct punishment. The original object of transportation was two-fold. Firstly it was intended to be a deterrent punishment as the idea of transportation to Black Waters was generally abhorred by the Indians and secondly to colonise the places which were expected to develop considerably by the import of labourers.

In 1919 the then Government of India appointed a Committee to enquire into the conditions of jails in India and also to make recommendations in respect of the Penal Settlement in the Andamans. They found "the moral atmosphere of the settlement.....thoroughly unhealthy".

The Committee recommended the abolition of the punishment of transportation and in pursuance thereof a Bill was introduced in the Legislative Assembly by Sir William Vincent in September 1922. In this Bill an attempt was made to deal with each offence separately and varying terms of imprisonment were proposed as equivalent to the varying periods of transportation according to the nature and gravity of the offence.

But the attempt to abolish the punishment for transportation had to be given up as the Government thought that by adopting a simple formula of commutation as contained in section 55 of the Indian Penal Code, they were likely to increase the severity of the sentence passed on the prisoner.

The deletion of the word 'transportation' from the Penal Code would thus result in no practical change so far as the administration of prisons is concerned.

The object of the present Bill, is however, a limited one. It will cause no change whatever so far as administration is concerned, but will give relief to the prisoners concerned, as well as relieve the Government of the higher costs of transportation even if transportation become feasible in near future.

Part one of section 304 provides for transportation for life or imprisonment of either description for a term which may extend to ten years. The court has got no power to award imprisonment of eleven or twelve years. There is no intermediate punishment between transportation for life and imprisonment for ten years. By the substitution of imprisonment for a term of years for transportation for life we will leave it in the power of the courts and specially the High Court to reduce the sentence to proper limits within their discretion. I have kept a period of 14 years as equivalent to 'transportation for life' as provided by section 55 of the Indian Penal Code, subject to any change in this term for good reasons.

MOHAMMAD AHMAD KAZMI.

BILL No. 68 OF 1952

A Bill to provide for restraining the taking or giving of dowry in connection with marriages and for matters incidental thereto.

BE it enacted by Parliament as follows:—

1. **Short title, extent, commencement and application.**—(1) This Act may be called the Dowry Restraint Act, 19

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(4) It shall apply in the first instance to Hindus, Buddhists, Sikhs and Jains, but the Central Government may, by notification, direct that it shall apply to members of any other community also.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) “dowry” means any property transferred or agreed to be transferred as a part of the contract of any betrothal or marriage by one party to the betrothal or marriage or the father, mother or guardian of that party to the other party to the marriage or to the father, mother or guardian of the other party, but does not include voluntary marriage gifts such as ornaments to a bride and dresses to a bridegroom, the value of which do not exceed one thousand rupees.

(b) “marriage” means a marriage between any two persons to whom this Act applies.

3. Penalty for taking dowry.—Any person who takes dowry shall on conviction be punishable with simple imprisonment which may extend to six months or with fine which may extend to the amount or value of the dowry taken or with both.

4. Penalty for giving dowry or abetment thereof.—Any person who gives dowry or abets the giving of dowry shall on conviction be punishable with simple imprisonment which may extend to one month or with fine which may extend to one thousand rupees or with both.

5. Penalty for dowry after solemnisation of marriage.—A person who at any time within three years after the solemnisation of a marriage to which this Act applies demands either directly or indirectly from the parents or any other person who was the guardian of the woman before her marriage any payment which is in the nature of a dowry, shall be deemed to have committed an offence under section 3 of this Act and shall be punishable accordingly.

6. Cognizance of offence.—No court shall take cognizance of any offence punishable under this Act except on complaint made in this behalf, provided that every such complaint shall be accompanied by a deposit of fifty rupees as security against false, vexatious or frivolous proceedings.

STATEMENT OF OBJECTS AND REASONS

The object of the Bill is to punish the taking or giving of dowries. This practice of accepting money from the parents or guardians of the bride or the bridegroom by either party has done tremendous harm to the society. Parents sometimes incur heavy debts in paying this dowry. This Bill is therefore, designed to do away with the evil practice of dowry.

JAYASHRI RAJJI.

STATEMENT OF OBJECTS AND REASONS

This Bill is designed to raise the age of consent of girls in extra-marital cases of rape to 18 years from 16 years as it is at present. As to the age of consent the Committee recommended the raising of age to 18 years but the recommendations have not been given effect to so far.

2. Now under the present stress of civilisation when better and more extensive opportunities exist for college and other kinds of education and employment in factories and offices, a young girl is more exposed than before and requires more protection. The age of a girl between 16 and 18, when she has no experience of the world, is the age when the law should cast its protecting wings around her. Her immature judgment and inexperience of worldly affairs entitles her to be treated as not fully grown up and nobody should be allowed to take advantage of her undeveloped intellect. In the eye of the law a girl of 18 is an infant, not capable of disposing of her properties. Obviously, therefore, the age of consent in the extra-marital case should not be less than 18.

3 A girl of 16 to 18, though not possessed of full developed intellect, is still in some cases fairly competent to understand consequences as well to express her mind and represent her feelings. In some cases young students or workers may be victimized and situations may arise when the enormity of the offence is very much mitigated by the surrounding circumstances. In such cases the parties should have the power of compromise in their own hands to avoid harassment of the law. It is therefore expedient to make the offence compoundable when the age of the girl is between 16 and 18 years.

In the present circumstances of the society, it is both necessary to give protection to young girls below 18 years by raising the extra-marital age to 18 and at the same time not to treat the offender very harshly in case the girl is a consenting party.

THAKUR DAS BHARGAVA.

BILL No. 61 of 1952

A Bill to restrain the custom of taking or giving of dowry in marriages.

WHEREAS it is expedient to provide for restraining the custom of taking or offering of dowry in marriages;

Be it enacted by Parliament as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Dowry Restraint Act, 19 .

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act unless there is anything repugnant in the subject or context,—

(i) “dowry” shall mean anything paid in cash or kind as a part of the contract of any betrothal or marriage, by the father, mother, or

guardian of a bride to a bridegroom or to his father, mother or guardian and *vice versa*, and includes:—

(i) *Paheramni*, (ii) *Paithan*, (iii) *Hunda*, (iv) Price of a bride, but does not include *Stridhan* as understood in Hindu Law and *Mahr* or dower as understood in Mohamedan Law.

(ii) "marriage" shall mean a contract or a ceremony for union of a female and male under any custom or law for the time being in force

3. Punishment for accepting dowry.—Any person who takes dowry shall on conviction be punishable with simple imprisonment which may extend to three months or with fine which may extend to double the amount or value of the dowry taken or with both:

Provided that no woman shall be sentenced to any term of imprisonment.

4. Punishment for giving dowry or abetment thereof.—Any person who gives dowry or abets the taking or giving of dowry shall on conviction be punishable with simple imprisonment which may extend to one month or with fine which may extend to one thousand rupees or with both:

Provided that no woman shall be sentenced to any term of imprisonment

5. Procedure for trying offences.—An offence under section 3 or section 4 of this Act shall be non-cognisable.

6. Notice to show cause.—No court shall proceed with a complaint under this Act unless it gives the accused a chance to show cause why he should not be prosecuted under this Act.

STATEMENT OF OBJECTS AND REASONS

Among many communities in India, there exists an evil custom of dowry. As a result of this custom many persons have to pay exorbitant sums to secure bridegrooms for their daughters. Again, in some parts of the country a regular traffic of selling and buying girls is being carried on. Under these circumstances, it is quite necessary to introduce a legislation to eradicate this evil custom.

FULSINGHJI B. DARHI.

BILL No. 69 OF 1952

A Bill to provide for punishment of those found guilty of adulteration of foodstuffs.

BE it enacted by Parliament as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the *Punishment for Adulteration of Foodstuffs Act, 1952*.

(2) It extends to the whole of India.

(3) It shall come into force at once.

2. Definition.—“Foodstuffs” for the purpose of this Act shall mean and include all kinds of grains, pulses, wheat flour, maida, gur, sugar; oil, milk, ghee and other milk products; tinned food, preserves, pickles, and prepared food including sweets, savouries and other ready-made food cooked and served in hotels, restaurants, refreshment rooms and other such public eating houses.

3. Punishment for Adulteration of foodstuffs.—(1) Any person, whether producer, preparer, dealer, server or seller of any foodstuffs found guilty of adulteration, so as to deteriorate the quality of article concerned, or passing of any inferior article for superior one of the same category or selling under false name or description any article of foodstuffs shall be prosecuted and if found guilty shall be punishable with imprisonment of either description for a period not exceeding two years or with fine not exceeding ten times the value of the adulterated article transacted in or rupees five thousand, whichever amount is higher or with both imprisonment and fine.

(2) No prosecution under this Act shall be commenced except by an officer appointed especially in that behalf and subject to the sanction of the Government of the State concerned.

STATEMENT OF OBJECTS AND REASONS

The evil of adulteration, especially with regard to foodstuffs and all eatable materials has become so rampant that it is practically impossible with regard to certain materials to get pure things which are so essential for the health of the people. The result is that people become victims of all sorts of diseases because of adulterated and impure food. It has, therefore, become necessary to provide for deterrent punishment for persons found guilty of offences of such acts.

B. P. JHUNJHUNWALA.

BILL No. 79 OF 1952

A Bill further to amend the Constitution of India.

BE it enacted by Parliament as follows:—

1. Short title.—This Act may be called the Constitution (Amendment) Act, 1952.

2. Amendment of article 291.—In article 291 of the Constitution,—

(i) in sub-clause (b) of clause (1) for the words “shall be exempt from all taxes on income” the words “shall not be exempt from any tax on income,” shall be substituted; and

(ii) the following new clause shall be added, namely:—

“(8) Notwithstanding anything in the Constitution, Parliament shall have the power to revise, or terminate, at any time, any covenant or agreement referred to in clause (1) of the Article 291, by passing a Bill to that effect by a simple majority.”

3. Insertion of article 362A.—After article 362 of the Constitution, the following article shall be inserted, namely:—

“362A. *Ratification of covenants and agreements entered into by the Nizam of Hyderabad.*—Notwithstanding anything in this Constitution, all the covenants or agreements entered into by the Nizam of Hyderabad with respect to his personal rights, privileges and dignities, shall be subject to the ratification by the Hyderabad State Legislative Assembly.”

STATEMENT OF OBJECTS AND REASONS

It is desirable that the amount of privy purses of Indian Rulers should be taxed to have more funds for nation-building activities.

2. Parliament must, therefore, be vested with the power in any emergency, if it thinks proper, to stop the payment of privy purses to the Indian Rulers by passing a Bill.

3. Similarly if the Hyderabad State Legislature wishes to revise the covenants and agreements and decide the future of the Nizam, it should have the opportunity to do so.

Hence this Bill.

C. MADHAO REDDI.

BILL No. 52 OF 1952

A Bill to preserve the milch and draught cattle of the country

BE it enacted by Parliament as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Indian Cattle Preservation Act, 195

(2) It extends to the whole of India.

(3) It shall come into force on the 1st day of 19

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(a) “Cattle” shall include cows, bullocks, their young calves, he and she-buffaloes and their young calves.

(b) “Person” shall include any company or association or body of persons whether incorporated or not.

3. Stopping of cattle slaughter.—No person shall wilfully kill or slaughter a cattle either for food or any other purpose either in a licensed slaughter house or any public or private place.

4. Penalty and procedure.—(1) Any person who wilfully contravenes the provision of section 3 and kills or causes to be killed a cattle shall be punishable with fine for each such offence upto a maximum of rupees five hundred or with rigorous imprisonment for six months or with both. In addition to the above sentence the convicting magistrate, may, in his discretion, at the time of the passing of the sentence for the offence under section 3 above, call upon the person convicted to execute a bond for a sum proportionate to his means with or without sureties for abstaining from commission of such offence during such period not exceeding two years as he thinks fit to fix.

(2) The inspector of police or any officer specially authorised or appointed in this behalf by the Local or Central Government shall take cognizance of the offence committed under this Act.

5. Application of the Act by the State Governments.—The provisions of this Act shall be made applicable by the State Governments to the territories governed by them within six months of the passing of this Act by a notification in the State Gazette.

STATEMENT OF OBJECTS AND REASONS

India is an agricultural country and needs draught animals. India is deficient in milk and also needs milch cattle. The cows and buffaloes and the bullocks provide these two pressing needs. It is therefore necessary to preserve and increase supply of draught animals and milch animals by stoppage of slaughter of cows, bulls, bullocks, he and she-buffaloes and calves of these animals.

GOVIND DAS.

BILL NO. 78 OF 1952

A Bill to make provision for employment and training for employment and to establish a comprehensive youth employment service.

WHEREAS it is expedient to make provision relating to employment and training for employment and to provide for the establishment of a comprehensive Youth Employment Service and for purposes connected therewith;

BE it enacted by Parliament as follows:—

1. Short title, extent and commencement.—(1) This Act shall be called the Training and Employment Act, 1952

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint in this behalf.

2. Providing proper facilities for employment of persons—Subject to the provisions of this Act, it shall be the duty of the Ministries of Labour and Education—

(i) to provide such facilities and service as may be considered expedient for the purpose of assisting persons to select, to fit themselves for and to obtain and retain, employment suitable to their age and capacity;

(ii) to assist employers to obtain suitable employees; and

(iii) generally to promote employment in accordance with the requirements of the community so as to attain thereby a higher standard of living for the whole community.

3. Appointment of Advisory Committees.—(1) The Ministries concerned may, for the purpose of advising and assisting them in the discharge of their functions, appoint such separate or joint Advisory Committees as they may think fit for the whole of India or any part thereof.

(2) The Ministries of Labour and Education shall make regulations with respect to the constitution and functions of any of the Advisory Committees appointed under sub-section (1).

4. Establishment of Employment Exchanges.—(1) The Ministry of Labour may establish and maintain in such places as it thinks fit Employment Exchanges, that is to say offices or places for the collection and furnishing of information either by the keeping of registers or otherwise respecting persons who seek to engage employees and persons who seek employment.

(2) Without prejudice to sub-section (1), the Ministries may make such arrangements which they deem expedient for the collection and furnishing of information for providing advice, guidance and other services to persons of any class (whether employed or not) for any of the purposes mentioned in section 2 of this Act.

5. Provision of Funds.—The Minister or Ministers concerned may provide in the annual budget such sums of money as may be needed for the fulfilment of the purposes of this Act.

6. Contribution towards the expenditure incurred by private bodies or any local authority.—The Minister or Ministers may defray or contribute towards the expenditure incurred by any organization, society or Provincial, State, or any other local authority whatsoever, towards their funds provided the Ministries are convinced that these contributions shall be spent for the purposes mentioned in section 2 of this Act.

7. Management of Employment Exchanges.—The Ministers may make regulations with respect to the management of all Employment Exchanges provided by them under this Act and otherwise with respect to the exercise of their functions thereunder.

8. Right of persons to refuse employment found through any Employment Exchange.—No person shall be disqualified or otherwise prejudiced in respect of facilities provided at any Employment Exchange on account of his refusal to accept employment found for him through an Employment Exchange if the ground of his refusal is that a trade dispute which affects the trade exists or that the wages offered are lower than those current in the trade in the district where the employment is found.

9. Provision for Compulsory Training Courses.—The Minister or Ministers may provide such training courses for persons whether employed or not and who are above the age of compulsion, as he or they thinks or think necessary or expedient for increasing the efficiency, knowledge, technical skill or capacity of such persons. Either of the Ministers may, by order in writing, compel any child or young person declared to be destitute, delinquent or uncared for under any law for the time being in force to join any training course for such length of time as may be indicated, for the purpose either for getting trained or for any other purpose.

10. Maintenance of Register of persons seeking employment and publication of figures of persons employed.—It shall be the duty of the Government to maintain in detail a Register of all persons who are seeking employment and the figures of persons employed shall be published in the official Gazette at least once in two weeks at regular intervals.

11. Implementation of schemes of training in co-operation with local authorities or private bodies.—Any scheme of training or employment may be worked through, or in co-operation with, any State Government or local authority or a recognized private organization.

STATEMENT OF OBJECTS AND REASONS

Although Employment Exchanges have come into being as a result of the war and they have since been continued, there remains much to be done in giving them a proper shape and status in the social and economic life of the country. In the second place, there is a great need of increased facilities of training in the various arts, crafts and industries. Although the Ministry of Labour is attending to this, there is lack of co-ordination between this Ministry and Ministry of Education. In fact the Ministry of Education appears to have nothing to do with this matter. The Bill, therefore, seeks to remedy this unsatisfactory state of affairs. The third object in view is to place greater emphasis on this important work and to arouse governmental as well as popular interest.

P. S. DESHMUKH

BILL No. 82 OF 1952

A Bill to provide for bringing up, maintenance, and education of Children who have lost their parents and have no other person to look after them in proper manner.

BE it enacted by Parliament as follows:—

1. Short title and extent.—(1) This Act may be called the Orphanage Act, 19

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(i) "orphan" shall mean a child who has lost his father or mother or both and has no other person to take care of him in a proper manner,

(ii) "orphanage" mean any *anathalaya*, *yateem-khana*, or any other place or home where orphans are brought up whether by charity or in any other way.

3. Management of orphanages and establishment of homes for orphans.—

(1) Soon after the passing of this Act, the Government shall arrange through their own agency or that of the States concerned to take up all orphanages throughout the country under state management.

(2) It shall be the duty of every state Government to trace all the orphans from time to time through official or public agencies and take them in Government custody for bringing them up, and for their proper maintenance, and education.

(3) Arrangements shall be made, in each state at suitable places for the establishment of orphanages where they shall be brought up and maintained and where arrangements shall also be made for their education.

4. Custody of orphans.—All orphans shall remain under the custody of the State for the purposes mentioned in section 3 till each one of them has acquired an age and education to enable him to earn his livelihood and pass his life as a full-fledged citizen of India.

5. Arrangements for technical education.—In each orphanage arrangements shall be made for the establishment of technical education so that each child on acquiring a certain age may learn some kind of industry or art in order that he may be able to earn as he learns and grows up so that he may ultimately be in a position to engage himself in some kind of job, or trade or profession to maintain himself independently.

STATEMENT OF OBJECTS AND REASONS

It has been observed that children who have lost their parents and have no other person to look after them have no means to get any proper education to become useful citizens in life. In all advanced countries the State provides for the maintenance and education of such orphans. The present Bill is intended to remove this disability from which orphans in this country suffer.

M. L. DWIVEDI.

BILL No. 46 OF 1952.

A Bill to enforce monogamy and to prohibit and penalise future bigamous marriages and to declare them illegal.

BE it enacted by Parliament as follows:—

1. Short title, extent and commencement.—(1) This Act shall be called the Monogamy Enforcement Act, 195 .

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint in this behalf.

2. Definition.—In this Act, unless there is anything repugnant in the subject or context, "Bigamous marriage" means the marriage of any person during the life time of the spouse of a former subsisting marriage.

Explanation.—Every marriage shall be presumed to be a subsisting marriage unless it is proved to have been dissolved or avoided according to the personal law to which the parties are subject.

3. Prohibition and illegality of future bigamous marriages.—(1) Notwithstanding anything contained in any law for the time being in force no person shall contract a bigamous marriage.

(2) Bigamous marriages entered into after the commencement of this Act shall be void and illegal.

4. Penalty for bigamous marriages and abetment thereof.—(1) Notwithstanding anything contained in this Act any person contracting a bigamous marriage within the terms of section 494 of the Indian Penal Code (XLV of 1860) shall be punished as provided in the said section of that Act.

(2) Whoever performs, conducts, arranges or otherwise abets any marriage which he knows or has reasons to believe to be bigamous shall be punished with imprisonment of either description which may extend to one year or fine which may extend to one thousand rupees or with both.

5. **Civil consequences of bigamous marriages.**—No civil rights or obligations of husband and wife shall accrue to parties to bigamous marriages and the issues of such marriages shall be illegitimate:

Provided that issues of such marriages shall not be illegitimate if such issues are conceived or born during wedlock in cases when marriage is contracted between persons whose spouse has been continually absent from such person or persons for a period of seven years and shall not have been heard of by such person or persons as being alive within that time.

STATEMENT OF OBJECTS AND REASONS

This Bill is designed to instal monogamy in the social life of the nation.

In this country monogamy has been practised on a very large scale though bigamous marriages are not prohibited. The Hindu and Muslim social codes of conduct while looking down at non-monogamous marriages have not held them to be unlawful or illegal. But now as the society has progressed and its social conscience has been aroused, the enlightened public opinion is insistent that bigamous marriages should be abolished and interdicted by law.

For the present needs of our society bigamy is not only unnecessary but positively unsuited, harmful and destructive.

The present state of society and the need of rehabilitating social relationships specially marriage shattered by the displacement of population as a result of partition has accentuated the problem beyond measure and the present Bill is sure to prove a remedy for a wholesome change in the situation.

THAKUR DAS BHARGAVA.

NOTES ON CLAUSES

1. Clause 1 deals with title, extent and date of commencement.
2. Clause 2 defines bigamous marriages.
3. Clause 3 declares such marriages void and illegal and prohibits them for the future.
4. Clause 4 adopts the qualified provisions of section 494 of the Indian Penal Code for penalising such marriages and seeks to penalise abetment also.
5. Clause 5 declares the civil consequences of such marriages but legitimises the progeny of bigamous marriages conceived or born during wedlock in cases of presumed death of spouse.

BILL No. 85 OF 1952

A Bill to provide for the better governance and administration of Muslim Wakfs and the supervision of Mutawallis' management of them, in India

Be it enacted by Parliament as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act shall be called the Muslim Wakfs Act, 19 .

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) This section and sections 2 to 4 shall come into force at once. The rest of the Act shall not come into force until such date as the Government may by notification in the Official Gazette, appoint in this behalf.

2. Application of the Act.—This Act shall apply to all Wakfs whether created before or after the commencement of this Act and situated in any of the following States:—

Bombay, Madhya Pradesh, Madras, Orissa, Punjab, West Bengal, Hyderabad, Madhya Bharat, Mysore, Patiala and East Punjab States Union, Rajasthan, Saurashtra and Bhopal,

and Chapter III of the Act shall further apply to all Wakfs situated in Bihar, Uttar Pradesh, Ajmer and Delhi:

Provided that the Union Government may by notification in the Official Gazette apply the Act to Wakfs situated in any other States or the whole of the Act to the Wakfs situated in Bihar, Uttar Pradesh, Ajmer or Delhi:

Provided further that the Union Government on the recommendation of a State Government may by notification in the Official Gazette exempt any Wakfs from the operation of this Act.

3. Definitions.—In this Act unless there is anything repugnant in the subject or context,—

(a) 'Alim' means a person who is a diploma holder of a 'madarsa Arabia' as defined in clause (7) of this section;

(b) 'beneficiary' means a person or object for whose benefit a wakf is created and includes religious, pious and charitable objects, and any other objects of public utility established for the benefit of the Muslim community;

(c) 'benefit' does not include any benefit which a mutawalli is entitled to claim solely by reason of his being such mutawalli;

(d) 'Board' means Board of Muslim Wakfs constituted under this Act;

(e) 'court' means unless otherwise stated either expressly or by implication, the court of the District Judge, or any court empowered by the Government to exercise jurisdiction under this Act;

(f) 'family' includes:—

(a) descendants,

(b) parents and grand parents,

(c) wife or husband, and

(d) persons related through any ancestor male or female, who live with and are maintained by the wakf;

(g) 'Jamiat-Ulema' means Jamiat-Ulamai-Hind which has got its head-office at Delhi and includes all its branches in the various States of India;

(h) 'madarsa Arabia' includes any educational institution where-in,—

(i) the Nizami Course or Shia Theological Course or Oriental Course of studies is prescribed for grant of degrees:

Provided that a madarsa in which Shia Theological Course is prescribed shall be called 'Shia madarsa Arabia' and all the rest shall be called 'Sunni madarsa Arabia',

(ii) there are at least two teachers to teach Arabic, and

(iii) the annual budget, at least for the previous two years has amounted to a sum of five thousand rupees;

(i) 'mutawalli' means a manager of a wakf or endowment and includes, an *Amin*, a *Sajjadanishin*, a *Mujawar*, a *Khadim*, a *Naib-Mutawalli*, a committee of management and save, as otherwise provided in this Act any person who is for the time being in-charge of, or is administering, any endowment as such ;

(j) 'net income' means the total income minus land revenue, and other cesses payable to the Government and local bodies;

(k) 'person interested in wakf' means any person who is entitled to receive any pecuniary or other benefit from the wakf and includes,—

(i) any person who has a right to worship or to perform any religious rite in a mosque, *idgah*, *imambara*, *dargah*, *khanqah*, *maqbara*, graveyard or any other religious institution connected with the wakf or to participate in any religious or charitable institution under the wakf;

(ii) the 'wakif' and any descendant of the wakif, and the mutawalli;

(l) 'prescribed' means prescribed by rules made by the Government and includes bye-laws made by the Board under this Act;

(m) 'property' includes Government security bonds, shares in firms, and companies, stocks, debentures, and other securities and instruments;

(n) 'Shia Conference' means all India Shia Conference which has its head-office at Lucknow and includes all its branches in the various States of India;

(o) 'Shia Political Conference' means All India Shia Political Conference and includes all its branches in the various States of India.

CHAPTER II

SURVEY OF WAKFS AND BOARDS OF WAKFS

4. Survey of wakfs.—(1) Within three months of the commencement of this Act the Government of each of the States to which this Act applies shall by notification in the Official Gazette appoint for each district a Gazetted Officer, either by name or by official designation, for the purpose of making a survey of all wakfs. Such Officer shall be called "The Commissioner of Wakfs".

(2) The State Government may, from time to time when necessary, cancel any appointment made under sub-section (1) or make a new appointment.

(3) "The Commissioner of Wakfs" shall, after making such enquiries as he may consider necessary, ascertain and determine,—

(a) the number of all Muslim wakfs showing Shia or Sunni wakfs respectively:

Provided that when there is a dispute whether a particular wakf is a Shia wakf or a Sunni wakf and there are clear indications as to the sect to which it pertains in the deed of wakf, such dispute shall be decided on this basis;

(b) the nature of each wakf,

(c) the gross income of property comprised in the wakf,

(d) the amount of Government Land Revenue cesses and taxes payable in respect of wakf property,

(e) expenses incurred in the realization of the income and the pay of the Mutawalli of each wakf.

(4) In making such enquiries as aforesaid the Commissioner of Wakfs shall exercise all the powers of a civil court for summoning and examining witnesses and documents, making local inspections, appointing commissioners for examination of witnesses, examining of accounts and making local investigations.

(5) The Commissioner of Wakfs shall submit his report of enquiry to the Government.

(6) The total cost of carrying out the provisions of this section and section 5 shall be borne by the Mutawallis of all wakfs in proportion to the income of the property of such wakf situated in the State to be assessed by the Chief Commissioner of Wakfs appointed under section 5.

(7) Notwithstanding anything contained in the deed or instrument of creating any wakf any Mutawalli may pay from the income of the wakf any sum due from him under sub-section (6).

(8) Any sum due from a Mutawalli under sub-section (6) may, on a certificate issued by the Government be recovered in the manner provided by law for recovery of an arrear of Land Revenue.

5. Appointment of Additional Commissioners of Wakfs.—(1) In addition to the Commissioner of Wakfs, appointed under section 4, the Government may, by notification in the Official Gazette appoint as many "Additional Commissioners of Wakfs" in each State as it may think necessary. The duties and powers of the Additional Commissioners of Wakfs shall be the same as those of the Commissioners of Wakfs under section 4.

(2) One of such Additional Commissioners of Wakfs shall be appointed **the 'Chief State Commissioner of Wakfs'** for the purpose of sub-section (3).

(3) The Chief State Commissioner of Wakfs shall apportion the work of survey between the Additional Commissioners of Wakfs in such manner as he may think proper, and shall direct by whom any enquiry made or report should be submitted and such an enquiry made or a report submitted by an Additional Commissioner of Wakf shall, for the purposes of this Act, be deemed to be the inquiry or report, as the case may be of the Commissioner of Wakfs, under sub-section (5) of section 4:

Provided that a survey made in the State before the commencement of the Act shall be deemed to have been made under the Act.

6. Commissioner's report.—(1) The Government shall forward a copy of the report of the Commissioner of Wakfs to the Board. The Board shall as soon as possible notify in the Official Gazette the wakfs, to which, according to such reports the provisions of this Act apply.

(2) The Mutawalli of a Wakf or any person interested in a wakf or the Board may bring a suit in a Civil Court of competent jurisdiction for a declaration that any transaction held by the Commissioner of Wakfs to be a wakf, is not a wakf, or any transaction held or assumed by him not to be a wakf, is a wakf or that wakf held by him to pertain to a particular sect does not belong to that sect:

Provided that no such suit shall be instituted by the Board after more than two years of the receipt of the report of the Commissioner of Wakfs and by a Mutawalli or person interested in a wakf after more than two years after notification referred to in sub-section (1):

Provided further that no proceedings under this Act in respect of any wakf shall be stayed or suspended merely by reason of the pendency of any such suit or of any appeal arising out of any such suit.

(3) Subject to the final result of any suit instituted under sub-section (2) the report of the Commissioner of Wakfs shall be final and conclusive.

(4) The Commissioner of Wakfs shall not be made a defendant to any suit under sub-section (2) and no suit shall be instituted against him for anything done by him in good faith in due discharge of his duties under the Act.

7. Establishment of Board.—(1) Each State Government shall establish within its territory a 'Board of Muslim Wakfs'.

(2) Each such Board shall be a body corporate, and shall have perpetual succession and a common seal, with power to acquire and hold property and to transfer any such property subject to the conditions and restrictions prescribed and shall by its said name, sue and be sued.

8. Constitution of the Board.—'The Board' shall consist of,—

(a) four members to be elected in the manner prescribed by Muslim members of the respective State Legislatures,

(b) four members to be elected in the manner prescribed by the Muslim members of the district boards, Municipal Boards, Town area and Notified area Committees of the respective States,

(c) four members to be elected in the manner prescribed by the Jamiat-Ulema and the teachers of the Sunni Madarsas Arabia,

(d) two members to be elected in the manner prescribed, by Shia Political Conference and Shia Conference and the teachers of the Shia Madarsas Arabia,

(e) One Mutawalli to be co-opted by the Sunni members of the Board and one Mutawalli to be co-opted by the Shia members of the Board,

(f) the President to be elected by the members of the Board if he is not one of the above seventeen members:

Provided that no Mutawalli of a Wakf shall be entitled to be elected in any of the categories save as provided in clause (e):

Provided further that where any one of the bodies referred to in sub-clauses (c) and (d) does not exist, the right of election shall be vested in the other body or bodies mentioned in each sub-clause respectively which is or are existing at that time.

9. Election of Members.—(1) If at any election of the Board no Muslim member is available under clauses (a) and (b) of section 8, the requisite number of such members shall be elected by the bodies referred to in sub-clauses (c) and (d) to the extent of one half each and on their failure to do so within the time fixed by the State Government, the deficiency shall be made up by nomination by the State Government.

(2) If the bodies referred to in clauses (c) and (d) fail to return the requisite number of members within the time as may be fixed by the State Government the deficiency shall be made up by nomination by the State Government.

10. Disqualification of a member.—A person shall not be eligible for appointment or election as a member, if such person—

- (a) is not a Muslim;
- (b) is less than twenty years of age;
- (c) is of unsound mind; and stands so declared by a competent court;
- (d) has applied for being adjudged an insolvent or is an undischarged insolvent;
- (e) has been convicted of any offence under this Act;
- (f) has been convicted of any such offence or is subjected by a criminal court to any such order as implies moral turpitude; and
- (g) has on any previous occasion, been removed from office or by order of a competent court from any position of trust either for mismanagement or for corruption.

11. Term of Membership.—The members of the Board shall hold office for five years:

Provided that an elected or co-opted member shall, notwithstanding the expiration of his term of office, continue to hold office until the vacancy caused by expiration of the said term has been filled.

12. Situation of Office—The office of the Board shall be located at such a place as is determined by the State Government.

13. Quorum.—The quorum for a meeting of the Board shall be seven.

14. Decision.—The decision of the Central Board shall be by a majority of its members present and voting. In case of equal division the President shall have a second or a casting vote:

Provided that the question of the use of surplus fund of Sunni or Shia Wakfs or the income of wakfs in accordance with the cypres doctrine and in case of those wakfs the objects of which are not evident from any written instruments or in cases in which the objects for which they were created have ceased to exist, shall be determined by the Board, by the votes, of only Sunni or Shia members present at the voting in respect of Sunni or Shia Wakfs respectively.

15. Meetings of the Board.—(1) The Board shall meet for the transaction of the business at least once in every three months and as often as is necessary to meet for the transaction of the business.

(2) Every meeting of the Board shall be convened by the Secretary, under the direction of the President and at least three weeks' notice shall be given to the members.

16. Special Meetings of the Board.—The special meetings of the Board shall be called by the President on the receipt of a requisition signed by not less than six members and specifying the business to be transacted at such meeting:

Provided that if the President fails to call such meeting within one month after the receipt of such a requisition, the meeting shall be called by the members who have signed the requisition.

17. President and Secretary.—(1) Each Board shall have a President and a Secretary who shall be Muslims:

Provided that no Mutawalli of a wakf or a Government Treasurer or a whole-time servant of the Government or the servant of any wakf administration, shall be elected as the President.

(2) Immediately after the formation of the Board and subsequently whenever it becomes necessary by reason of an existing or anticipated vacancy or otherwise to appoint a President, the Board shall elect one of its members or any other person as its President. The President shall be honorary and shall hold office for a term of five years, but if he is a member of the Board his term shall expire on the expiry of his term as a member.

(3) The Board shall appoint a Government Gazetted Officer as its whole-time Secretary on such terms or allowances and other conditions of service as may be prescribed:

Provided that if a Government Gazetted Officer is not available the Board may appoint another person.

18. Staff of Board.—(1) The Board may appoint such officers and staff including superintendents of wakfs, inspectors, auditors, and, the like, on such salaries, allowances and conditions of service as may be necessary for the purpose of this Act and for such a period as it may think fit.

(2) The President, Secretary and all other persons appointed under subsection (1) shall be deemed to be public servants within the meaning of the Indian Penal Code, 1860.

(3) The Board may fine, suspend, dismiss or remove a Secretary who is not a Government Gazetted Officer, or any other person appointed by it under sub-section (1):

Provided that the Secretary who is a Government Gazetted Officer, shall be liable to removal by the State Government on the recommendation of the Board.

19. Functions of the Board.—(1) The General Superintendence of all wakfs to which this Act applies shall vest in the Board. The Board shall do all things reasonable and necessary to ensure that wakfs or endowments under its superintendence are properly maintained, controlled and administered and duly appropriated to the purposes for which they were founded or for which they exist.

(2) Without prejudice to the generality of the provisions of sub-section (1) the powers and duties of the Board shall be,—

(a) to complete and maintain an authentic record of rights containing information relating to the origin, income, object and beneficiaries of every wakf in each district,

(b) to prepare and settle its own budget,

(c) to settle and pass budget submitted by the Mutawallis, to the Board :

Provided it is in consonance with the wishes of the wakif and is in accordance with the terms of the deed of wakf, or that of a resolution of the Board, if any,

(d) to appoint and remove Mutawallis according to the provisions of this Act,

(e) to institute and defend suits and proceedings in a court of law relating to,—

(i) administration of wakfs,

(ii) taking of accounts,

(iii) appointment and removal of Mutawallis in accordance with the deed of wakf,

(iv) putting the Mutawallis in possession of a wakf or removing him from that possession,

(v) settlement or modifications of any scheme or management,

(f) to sanction the institution of suits under section 92 of the Code of Civil Procedure, 1908, relating to wakfs, to which this Act applies,

(g) to take measures for the recovery of lost properties of any wakf,

(h) to settle schemes of management for a wakf or application of surplus fund of a wakf or income of wakf properties of a wakf in accordance with the cypres doctrine in case of those wakfs, the objects of which are not evident from any written instrument or in cases in which the object for which they were created have ceased to exist,

(i) to enter upon and inspect wakf property,

(j) to cause inspection to be made of the property ^{of} the office of a wakf including accounts, and to authorise the Secretary ^{or} any of its members, officers, or servants for that purpose,

(k) to investigate into the nature and extent of wakfs and properties of the wakf and call from time to time accounts and other returns and information from the Mutawallis and give directions for the proper administration of wakfs,

(l) to arrange for the auditing of accounts submitted by Mutawallis,

(m) to direct, the deposit of surplus money in the hands of a Mutawalli in any approved bank or to utilize it according to the resolution of the Board,

(n) to administer the Wakf Fund,

(o) to keep regular account of receipts and disbursements and submit the same, in the manner prescribed,

(p) to institute when necessary an enquiry relating to the administration of the wakf:

Provided that in the appointment of Mutawallis or making any other arrangement for the management of wakf property, the Board shall be guided as far as possible by the directions of wakif, if any,

(q) to sanction leases of properties for more than three years or mortgage or exchange properties according to the provisions of the Muslim Law:

Provided that at least three-fourths of the members of the Board vote in favour of such a transaction,

(r) to furnish to the State Government or to any such officer as the State Government may appoint in this behalf, any statement, report, return or other documents or any other information which the State Government or any such officer, as the case may be, may require from time to time,

(s) to direct the Mutawalli to institute and defend suits in courts of law, and take necessary action in respect of wakf property:

Provided that in case of failure of Mutawalli to do so, or in case when there is no Mutawalli or when the office of Mutawalli is disputed, the Board shall do all these things itself and shall incur the necessary expenses from the wakf fund,

(t) to realise, in the prescribed manner, and subject to prescribed conditions, out of the income of any wakf, the costs incurred by the Board in any of the matters mentioned in clause (s), in respect of such wakf,

(u) to permit a Mutawalli to retire from his office and in case the Mutawalli has power to appoint his successor, to permit him to make appointment in his life time.

20. Delegation of Powers.—The Board may delegate any of its powers and duties under this Act to the President or Secretary or to any one or more of its members and may likewise withdraw such delegation.

21. Establishment of Committees.—The Board whenever it considers necessary, may, establish either generally for a particular purpose or in any specific area or areas committees for the supervision of wakfs in that area. The constitution, functions and duties of such committees shall be determined from time to time by the Board:

Provided that it shall not be necessary for the members of such committees that they should be members of the Board also.

22. Removal of a member.—The State Government on a report by the Board may, by notification, in the Official Gazette, remove any member from the Board if he—

(a) refuses to act or becomes incapable of acting as a member of the Board, or

(b) becomes subject to any disqualification mentioned in section 10,

(c) without excuse, sufficient in the opinion of the Board, is absent without the consent of the Board, for more than six consecutive meetings of the Board.

23. Resignation of a member.—A member of the Board may resign his office by giving notice in writing to the President and on such resignation being accepted by the Board, shall be deemed to have vacated his office.

24. Filling of a vacancy.—When a seat of a member becomes vacant by his removal, resignation or death, a new member shall be elected or co-opted as the case may be, in the manner provided in section 8 and shall hold office as long as the member whose place he fills would have been entitled to hold office if such vacancy had not occurred:

Provided that no act or order of the Board or its officer shall be deemed invalid by reason only that the member or members of the Board at the time of the performance of such an act or at the passing of such an order was less than the number provided in section 7.

25. Removal of President.—The State Government may remove the President if the President,—

(a) is or becomes subject to any disqualification specified in section 10,

(b) refuses to act or becomes incapable of acting, or acts in a manner which the State Government after hearing any explanation that he may offer, consider to be prejudicial to the interest of wakfs, or

(c) if he fails without excuse to attend three consecutive meetings of the Board.

26. Opinion of the Board.—The mutawalli of any wakf governed by this Act may apply by petition to the Board for its opinion, advice or direction on any question affecting the management or administration of the property of such wakf and the Board shall give such opinion, advice or direction:

Provided that the Board shall not be bound to give such opinion, advice or direction on any question which is not in its opinion a fit question for summary disposal.

27. Inspection and copies of Records.—The Board may grant inspection and copies of its proceedings or other records in its custody on payment of such fees and subject to such conditions as may be prescribed by rules. All copies issued under this section shall be certified by the Secretary of the Board in the manner provided in section 76 of the Indian Evidence Act, 1872.

CHAPTER III

CENTRAL BOARD OF MUSLIM WAKFS

28. Central Board of Muslim Wakfs.—(1) The Union Government shall establish in the Union of India a Central Board of Muslim Wakfs.

(2) The Central Board of Muslim Wakfs shall be a body, corporate and shall have perpetual succession and a common seal, with power to acquire and hold property and to transfer any such property subject to the conditions and restrictions prescribed and shall by its said name sue and be sued.

29. Constitution of the Central Board.—The Central Board shall consist of:—

(a) one member from each of the following States to be elected by the members of Board of Muslim Wakfs in that State:—

(1) Hyderabad, (2) Madhya Bharat, (3) Madhya Pradesh, (4) Rajasthan, (5) East Punjab, (6) Patiala and E. P. States, (7) Orissa, and (8) Saurashtra;

(b) two members from each of the following 3 States to be elected by the members of the Board of Muslim Wakfs in each of the States one of them being a Shia and the other a Sunni:—

(1) West Bengal. (2) Bombay. (3) Madras;

(c) two members to be elected by the members of the two Boards established in U.P. under Muslim Wakf Act, 1936, (XIII of 1936). Each of the two Boards electing one member each separately;

(d) two members to be elected by the members of the two Boards established in Bihar under the Bihar Wakfs Act, 1948, (VIII of 1948). Each of the two Boards electing one member each separately;

(e) two members to be elected by the two Boards established in Delhi under the Delhi Muslim Wakfs Act, 1943 each of the two Boards electing one member each separately;

(f) one member to be elected by the members of the Board of Ajmer constituted under the Durgah Khwaja Sahib Act, 1936, (XXIII of 1936);

(g) four members to be co-opted by the elected members of the Board, one of them being a Shia and three of them being Sunni members;

(h) the President, if he is not one of the members:

Provided that in case where a Board has not been regularly constituted as mentioned in clauses (a) and (b), the Central Board shall nevertheless begin to function without a member from such a Board of the State, but the State Boards shall have the right of electing their representatives for the Central Board as soon as it is constituted.

30. Term of Membership.—The members of the Central Board shall hold office for a period of five years and in case of members elected by the State Boards the period of their membership of that Board or five years, whichever is less:

Provided that an elected or co-opted member shall notwithstanding the expiration of his term of office, continue to hold office until the vacancy caused by the expiration of the said term has been filled.

31. Situation of Office.—The office of the Central Board shall be located at Delhi:

Provided that the members of the Board shall have the power of changing the location of the office by passing a resolution to that effect by a majority of the total membership of the Board and a majority of not less than two-thirds of the members of the Board present and voting.

32. Quorum.—The quorum to constitute a meeting of the Central Board shall be seven, provided that the Board shall have power to change the number by means of Rules made in that behalf.

33. Decision.—The decision of the Central Board shall be by a majority of its members present and voting. In the case of an equality of votes, the President shall have and exercise a second or casting vote:

Provided that the question of the use of the surplus funds or the income of wakfs, in accordance with the cypres doctrine and in case of these wakfs the objects of which are not evident from any written instrument or in cases in which the objects for which they were created have ceased to exist, shall be determined by the Central Board by the votes of only Sunni or Shia members present at the meeting in respect of Sunni or Shia wakfs respectively.

34. Meetings of the Central Board.—(1) The Board shall meet for the transaction of business at least once in every year, and this meeting shall be termed the Annual meeting.

(2) The date of the meeting of the Board shall be fixed by the Secretary, under the directions of the President and at least one month's notice shall be given to the members in respect of the date so fixed:

Provided that the date of the first meeting of the Board after this Act comes into force shall be fixed by the Union Government by notification in the official Gazette and by sending information to the members.

(3) The President shall have power to summon special meetings of the Board for the transaction of the business which he considers necessary, or in pursuance of a resolution of the Board or on a requisition signed by not less than seven members, and specifying the business to be transacted at such a meeting. A notice of three weeks to the members shall be necessary for the holding of special meeting.

35. Staff.—(1) The Central Board shall have a President and a Secretary who shall be Muslims, provided that no Mutawalli of a wakf or a Government Treasurer or a whole-time servant of the Government or the servant of any wakf Administration shall be elected as the President.

(2) Immediately after the formation of the Central Board and subsequently whenever it becomes necessary by reasons of an existing or anticipated vacancy or otherwise to appoint a President, the Central Board shall elect one of its members or any other person as its President. The President shall be honorary and shall hold office for a term of five years but if he is a member of the Board his term shall expire on the expiry of his term as a member of the Board.

(3) The Central Board shall appoint one person qualified to carry on the work of the office of the Board as the Secretary. The Secretary shall be a salaried servant of the Board and shall hold office for a term of five years. He will be eligible for re-appointment after the expiry of his term. He will not be a member of the Board.

36. Staff of the Central Board.—The Central Board may appoint Secretary and such officers on staff on such salary and allowances and conditions of service as may be necessary for carrying out their duties under the Act, and for such period as they think fit.

37. Functions and Powers of the Central Board.—The functions and powers of the Central Board shall be—

- (1) to lay down the principles for administration of wakfs;
- (2) to co-ordinate the activities of the various Boards in the matter of administration of wakfs and for that purpose to receive annual reports from the various wakfs Boards situated within the Union of India including the wakfs Boards in U.P. and Bihar constituted under the various statutes and of Delhi and Ajmer constituted under the Central Acts and to give their opinion on such reports;
- (3) to give their advice to the various Boards specially in case such advice is sought by those Boards;
- (4) in case of persistent non-compliance with the advice of the Central Board by any Board of the State, the Central Board shall have the power to make a report to the Government of the State to take such action in respect of the Board as it may deem desirable.

38. Finance of the Central Board.—(1) The expenses of the office, officers and servants of the Central Board and the travelling and daily allowances of the co-opted members of the Central Board and of the President, if he is not a member of a State Board, shall be distributed equitably between the various State Boards, and in case of there being no agreement about it amongst the members of the Central Board, by the Central Union Government. The amounts so fixed shall be payable in advance every year.

(2) The travelling and daily allowances of the members of the Central Board shall be determined and paid by the various State Boards to which these members belong.

39. Power to make Rules.—(1) The Central Board may make rules not inconsistent with this Act for the purposes of carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power the Central Board shall have the power to make rules with respect of—

- (a) procedure to be adopted at the annual meeting and the special meetings of the Central Board;
- (b) quorum for meetings;
- (c) preparation and preservation of the record of the resolutions and meetings of the Board;

(d) method to be adopted for the scrutiny of the Administration Reports of the various Boards, and the procedure for giving advice in respect of them;

(e) record of the advice tendered by the Central Board to various Boards of the State and steps taken in respect thereto.

CHAPTER IV

REGISTRATION OF WAKFS

40. Registration.—(1) Every wakf whether created before or after the commencement of this Act shall be registered at the office of the Board.

(2) The Mutawalli of every such wakf shall make an application for registration within three months of his entering into possession of the wakf property, or in the case of wakf existing at the time of formation of the first Board, within three months of the formation of such Board.

(3) Applications for registration may also be made by wakif or his descendants or a beneficiary of the wakf or any Muslim belonging to the sect to which the wakf belongs.

(4) An application under this section shall be accompanied by a true copy of the deed or deeds of wakf, together with a statement containing the following particulars as far as known to the applicant,—

(a) a description of the wakf properties sufficient for the identification thereof,

(b) the gross annual income from such properties,

(c) the amount of Government revenue, and cesses and of all rents and taxes payable in respect of the wakf properties,

(d) an estimate of expenses annually incurred in the realisation of the income of the wakf properties,

(e) the amount set apart under the wakf for—

(i) the salary of the Mutawalli and allowances to individuals;

(ii) purely religious purposes ;

(iii) charitable purposes:

Provided that every such application shall be verified by the Mutawalli in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings.

(5) The Board may require the applicant to supply any further particulars or information that it may consider necessary.

(6) On receipt of an application for registration, the Board may, before registration of the wakf, make such enquiries as it thinks fit in respect of its genuineness and validity and the correctness of any particulars, in the statement filed with the application and when the application is made by any person holding possession of any property or properties belonging to the wakf, the Board shall give notice of the application to the person in possession and hear him, if he desires to be heard before passing final orders.

(7) An application for registration of wakfs may be presented or be sent by registered post to the office of the Board.

41. Register of wakfs.—The Board shall maintain a register of wakfs which shall contain the following particulars in respect of each wakf and shall also contain a copy or copies of the deed or deeds creating the wakf when available,—

(a) the names of trustees, Mutawalli and other persons connected with the administration of the wakf,

(b) the rule of the succession of the office of the Trustees (if any), or Mutawallis under the deed or wakf or by custom or by usage,

(c) particulars of the scheme of administration and the scale of expenditure at the time of registration,

(d) particulars of all properties relating to the wakf and all title deeds and documents relating thereto, and

(e) such other particulars as may be prescribed.

42. Power to order Mutawalli to apply.—The Board may direct a Mutawalli to apply for the registration of a wakf, or to supply any information regarding a wakf or may itself collect such information and may cause the wakf to be registered or may at any time amend the register of wakfs.

CHAPTER V

AUDIT OF ACCOUNTS

43. Audit.—(1) The accounts kept by the Board and the accounts submitted by Mutawallis under section 62 shall be audited annually or at such other intervals as may be determined by the Board by the auditors appointed under section 18 of this Act.

(2) The Auditors shall submit their report,—

(a) to the local Government in the case of accounts of a Board; and

(b) to the Board, in the case of the accounts of a wakf.

(3) The audit report of the auditors shall among other things, specify all cases of irregular, illegal or improper expenditure or of failure to recover moneys or other property or of loss or of waste of money or other property caused by neglect or misconduct of the Mutawalli.

44. Examination of the Auditor's report.—The Board shall examine the auditor's report and after calling for the explanation of any person in regard to any matter mentioned therein shall pass such orders on the report as it may think fit.

45. Realization of Amount.—Every sum certified to be due from any person by an auditor in his report under section 62, unless such certificate is modified or cancelled by the Board by an order made under section 82 and every sum due on a modified certificate shall be recoverable from such person by the Board.

CHAPTER VI

ENQUIRY AND SUPERVISION

46. Enquiries by the Board.—For the purpose of verifying the particulars contained in the statement filed under section 40 or acting on the report of the auditor submitted under section 43, the Board may enquire into any matter either through any of its officers or members or any other person appointed under this behalf.

47. Application for enquiry.—Any member of the community to which the wakf belongs may by an application, supported by an affidavit, apply to the Board to institute any enquiry relating to the administration of a wakf, and the Board may take such action as it may think fit.

48. Powers of enquiring officer.—For the purposes of an enquiry under this Chapter the enquiring officer or committee shall have the same power of enforcing the attendance of witnesses and production of documents as the Civil Court has under the Code of Civil Procedure, 1908.

CHAPTER VII

LEGAL PROCEEDINGS

49. Civil suits relating to wakf.—Notwithstanding anything contained in section 92 of the Code of Civil Procedure, 1908 (Act V of 1908), a suit to obtain any relief mentioned in section 92 of the said Code, relating to any wakf to which this Act applies may be instituted by the Board without obtaining the consent referred to in that section, or by any person interested in the wakf with the previous sanction in writing of the Board and without obtaining the consent referred to in that section:

Provided that if in such suit the validity or propriety of any order or direction passed or made by the Board is challenged a suit shall be instituted without previous sanction after giving two months notice to the Board as provided in section 50.

50. Suits under Religious Endowments Act.—A suit under section 14 of the Religious Endowments Act, 1863 (XX of 1863), concerning a wakf to which this Act applies, may, notwithstanding anything to the contrary contained in that Act be instituted by the Board without obtaining the leave referred to in section 18 of that Act, and no such suit shall be instituted by any person without the consent in writing of the Board.

51. Protection of the Board Committees, and their staff.—(1) Save as otherwise provided in this Act, no act done or direction issued by the Board *except an order settling the scheme of management of a wakf* shall be questioned in any court.

(2) No suit shall be instituted against the Board, or any of its members or servants or any other person deputed by the Board for carrying out any enquiry under this Act, for anything done by it or him in good faith in due discharge of his duties under this Act.

52. Compromise in suits by or against mutawallis.—No suit or proceedings in any court by or against a mutawalli of a wakf to which this Act applies, and relating to title to wakf property or to the rights of the mutawallis shall be compromised without the sanction of the Board.

53. Notice of suits by courts.—When any suit relating to title to any wakf property or to the right of Mutawalli is instituted in any Civil Court such court shall give a notice of such suit to the Board at the cost of the plaintiff. The Board may thereupon apply to be made a party to the suit, and the Court shall make the Board a party on such an application.

54. Notice of suits.—No suit shall be instituted against the Board, in respect of any act purporting to be done by the Board in due discharge of its functions under this Act, or for any relief in respect of any wakf, until the expiration of two months next after notice in writing has been delivered to the Secretary, or left at the office of the Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

55. Power of Board to make application to the court in case of failure of mutawalli to discharge his duties.—Where a charge exists on any property for the performance of any religious, pious or charitable act recognised as such by Muslim Law and there is a failure to perform such an act the

Board may apply to the Court for an order directing the person in possession of the property to pay to the Board the amount necessary for the performance by the Board, or to any person appointed by the Board in this behalf, of the act for the performance of which the charge was created.

56. Application to compel mutawalli to discharge obligation or appointment of receiver.—Where the mutawalli of a wakf wilfully fails to discharge any of the duty imposed on him under the wakf, the Board or any person interested in wakf may make an application to the court for an order,—

(a) directing the mutawalli to discharge such obligation within a time to be specified in the order, or

(b) appointing receiver of the funds and property of the wakf if the mutawalli fails to carry out such direction within the time so specified.

57. Notice to Board of proceedings under the Land Acquisition Act, 1894, in respect of wakf property.—(1) In the course of a proceeding under the Land Acquisition Act, 1894 (I of 1894), the Collector before making an award in respect of wakf property, shall issue a notice to the Board and shall stay further proceedings to enable it to plead as a party to the proceedings at any time within three months from the date of the receipt of the notice.

(2) Where the Board has reason to believe that any property under acquisition is a wakf property, it may at any time before the award is made appear and plead as a party to the proceedings.

(3) When the Board has appeared under the provision of sub-section (2), no order shall be passed under section 31 or section 32 of the Land Acquisition Act, 1894 (I of 1894), without giving opportunity to the Board to be heard.

(4) Any order passed under section 31 or section 32 of the Land Acquisition Act, 1894 (I of 1894), without giving opportunity to the Board to be heard shall be voidable at the option of the Board.

58. Notice of sales to be given to Board.—(1) Whenever any wakf property is notified for sale in execution of a decree of a Civil Court under the provisions of any Act, for the recoveries of public demand or in pursuance of a decree or an order of a collector or any revenue officer such court, collector, or revenue officer, shall give notice thereof to the Board also.

(2) If the notice required by sub-section (1) to be given to the Board in respect of any sale is not given, the sale shall be voidable at the option of the Board.

CHAPTER VIII

ADMINISTRATION CHARGES

59. Contribution by wakf.—(1) Every wakf to which this Act applies shall contribute annually for meeting the expenses incurred in the administration of this Act, such sum not exceeding five per cent. of the net annual income of such of its property as is situate in the State as the Board, subject to the sanction of the State Government may determine:

Provided that in case of those educational institutions which do not receive any aid from the Government or of wakf whose income is less than rupees one hundred per annum the aforesaid percentage shall not be levied.

(2) Contribution under this section shall be payable with effect from the date on which this section comes into force.

(3) The Board may, in the case of any particular wakf or wakfs, reduce or remit such contribution as it may think fit.

(4) Such contribution shall, subject to the prior payment of any dues to the Government and any other Statutory charges on the wakf property or the income thereof, be a first charge on the income of the wakf.

(5) If a mutawalli or person incharge of the managing or administration of the wakf realizes the income of the wakf and neglects or refuses to pay such contribution he shall also be personally liable for such contribution to the extent of the balance of realization remaining in his hand after payment of Land Revenue, cesses and taxes due to Government and local bodies, and the liability may be enforced in the manner as aforesaid.

(6) The mutawalli of a wakf may realize the fee payable by him under sub-section (1) from the beneficiaries of such wakf, but the realizable fee from any one of such persons shall not exceed such amount as shall bear to the total contribution payable the same proportion as the value of benefits recoverable by such persons bears to the entire net available income of such wakf:

Provided that, if there is any income of such wakf in excess of the amount payable as due under this Act other than the fee payable under sub-section (1) and in excess of the amount payable under the wakf deed, the fee shall be paid in the first instance out of such income.

60. Board's power to borrow.—The Board shall have the power with the previous sanction of the State Government to borrow for the purpose of giving effect to the provisions of this Act, such amount and on such conditions as the State Government may determine.

CHAPTER IX

MUTAWALLIS

61. Appointment of mutawallis.—When there is a vacancy in the office of mutawalli of a wakf and there is no one competent to be appointed under the terms of the deed of wakf, or where the right of any person to act as mutawalli is disputed, the Board may appoint any person to act as a mutawalli from such period and on such conditions as it may think fit.

62. Duties of mutawallis.—(1) Every mutawalli shall carry out all directions consistent with the provisions of this Act, issued to him by the Board of wakf or by a committee appointed by the Board for the purpose of proper administration of wakfs. In particular he shall,—

(a) supply the details of wakfs in his charge,

(b) submit within one month after the 31st day of March, next following the date on which the wakf has been registered under section 28 and thereafter within thirty days of the 31st day of March, in every year, a full and true statement of accounts in such form and containing

such particulars as may be prescribed by the Board and verified in manner prescribed by the Code of Civil Procedure, 1908, for verification of pleadings of all moneys received or expended by him on behalf of the wakf of which he is the mutawalli in respect of that portion of the wakf property which is situate in the State during the period of twelve months ending on the 31st March preceeding the submission of such statement or during that portion of the said period during which the provisions of this Act have been applicable to the wakf:

Provided that the date on which the annual accounts are to be closed may be verified at the discretion of the Board.

(2) All the details, accounts, and statements mentioned in sub-section (1) shall be submitted to Board. The mutawalli shall if and when required further be bound by himself or by his agent to attend at the audit of his accounts and to give all information required relating to his accounts.

63. Power of the Board to make certain payment on behalf of wakf.—Where a mutawalli refuses to pay or fails to pay any Land Revenue, cesses, rent, rates of taxes due to the State or to a local Authority/Body from a wakf, the Board may defray the charges from the wakf fund and may recover the amount so paid from the wakf property and, if the refusal or failure of the mutawalli was in the opinion of the Board wilful, the Board may also recover from the mutawalli responsible for such refusal or failure damages at the rate of twelve and a half per cent. of the amount so paid:

Provided that a mutawalli aggrieved by a decision of the Board to recover damages under this sub-section may apply to the court to have the order regarding damages set aside or modified and the order of the Court on such application shall be final.

64. Removal of mutawallis by the Board.—The Board may remove a mutawalli from his office if such mutawalli—

(a) after having once been convicted of an offence punishable under section 66 is again convicted of any such offence;

(b) is convicted of an offence relating to the wakf property or money which in the opinion of the Board renders him unfit to continue to be a mutawalli; or

(c) refuses to act; and

(d) applies for being adjudicated or is an undischarged insolvent.

65. Committee of supervision.—(1) Whenever the supervision of a wakf is vested in any existing committee appointed by the wakf or any competent court of authority such committee shall, notwithstanding anything contained in the Act, continue to function until superseded by the Board under sub-section (2):

Provided that such committee shall be under the control of the Board and shall abide by such directions of the Board as are not inconsistent with any directions of the wakf or of the court or authority appointing such committee.

(2) The Board may supersede any such committee as aforesaid if it does not in its opinion function properly and satisfactorily, and on such supersession any decree or order of a court or competent authority under which such committee has been constituted shall cease to have any force.

(3) Any order passed by a Board under sub-section (2) shall be final and shall not be questioned in any court of law.

66. Penalties.—(1) If a mutawalli fails without reasonable cause or excuse, the burden of proving which shall be upon him,—

- (a) to apply for a registration of a wakf as provided in section 28, or
- (b) to submit statement of particulars or of accounts and returns as required by this Act, or
- (c) to supply information or particulars required by the Board, or
- (d) to allow inspection under the provision of this Act, of wakf properties and deeds and documents relating thereto, or
- (e) to give assistance in enquiries and investigations when called upon to do so by the Board or Committee appointed by the Board or by superintendents or auditors working under the orders of the Board, or
- (f) to deliver possession of any wakf property if ordered to do so, by the Board,
- (g) to deposit any surplus income in his hands in any recognized bank when directed to do so by the Board,

he will, on conviction before a magistrate of the first or second class be punishable with fine which may extend to rupees two hundred and fifty for the first offence and to rupees one thousand for every subsequent offence.

(2) No Magistrate shall take cognizance of an offence under sub-section (1) otherwise than on a complaint made by any person duly authorised by the Board in this behalf.

CHAPTER X

RULES AND BYELAWS

67. Rules by State Government.—(1) The State Government may after previous publication in the Official Gazette make rules not inconsistent with this Act for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power the State Government may make rules with respect to all or any of the following matters,

- (a) the conditions and restrictions subject to which the Board may transfer any property under sub-section (2) of section 7 of the Act;
- (b) the method in which the work of the survey of wakf under Chapter I is carried on;
- (c) the manner in which the member shall be elected under section 8 of the Act;
- (d) other matters expressly required or allowed by this Act to be prescribed or done by the State Government.

68. Byelaws by the Board.—(1) The Board may subject to the approval of the State Government make byelaws not inconsistent with this Act for the purpose of carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power the Board shall with the approval of the State Government have power to make byelaws with respect to,—

(a) all matters required or allowed by this Act to be prescribed or done by the Board,

(b) the conduct of business by the Board,

(c) the grant of travelling allowances to the President and members of the Board,

(d) the constitution, functions and procedure of the committee appointed by the Board and their finance,

(e) the custody and investment of wakf funds,

(f) the custody and investment of the Fund of any wakf, and the conditions subject to which a mutawalli shall deposit wakf money in his hands and the conditions subject to which a mutawalli can withdraw such money,

(g) books and accounts to be kept at the office of the Board and by the committee appointed by the Board,

(h) the manner in which the accounts of wakf shall be audited and published, the time and place of such audit, the form and content of the auditors' report and the scale of remunerations to be paid to the auditors,

(i) the number, designation, grades, salaries, allowances, and other conditions of service, including the power and duties of the officers and servants of the Board,

(j) the custody of the common seal,

(k) the person by whom receipts may be granted for money received by the Board,

(l) the granting of pensions and gratuities out of wakf Funds,

(m) the method of calculating the income of a wakf, for the purpose of levying contribution under this Act,

(n) the fee to be levied on applications before the Board of committees under the Act, or on application for inspection of register of wakfs and other records and for copies of the proceedings and other records of the Board.

(3) All byelaws framed under this section shall be published in the Gazette and shall have thereafter the force of law.

69. Names of members and President to be notified.—The names of the members and President of the Board shall be published in the official Gazette of the State as soon as possible after their election or co-option as the case may be.

70. Accounts and Budget of the Board.—The Accounts of the Board shall be audited annually by an auditor appointed by the Government and a copy of the report and a copy of the Budget shall be submitted to the State Government and to the Central Board of Muslim Wakfs for information. The Board shall give such information and submit such reports and statements as may be called for by the State Government and Central Board of Muslim Wakfs.

71. Extension of time.—The Board may, if it is satisfied that there is sufficient cause for doing so, extend time within which any act is required or ordered to be done under this Act.

72. Wakf Fund.—All moneys realized under section 59 and all moneys realized from fees in respect of proceedings before the Board and all other moneys realized under this Act, shall form a Fund to be called the 'Wakf Fund'.

Such fund shall be under the control of the Board subject to the general supervision of the State Government and shall be applied to the following expenses which shall be met exclusively from that fund :—

(a) repayment of any loan incurred under section 60 and payment of interest thereof,

(b) payment of the cost of audit of Wakf Fund;

(c) payment of the salary and allowances of the Secretary and staff of the Board and the Secretary and the staff of sub-committee under the Board;

(d) payment of travelling allowances to the President, members, Secretary and staff of the Board or of any person deputed for any enquiry under the Act;

(e) payment of all expenses incurred by the Board and the sub-committee in the performance of the duties imposed and the exercise of the powers conferred by this Act

73. Liability of Government for expenses.—Government shall not be liable for any expenditure incurred in the administration of this Act.

CHAPTER XI

SAVINGS AND REPEAL

74. Savings.—Nothing in the following Regulations, Acts and provisions shall apply to any wakf to which this Act applies :—

(i) Bengal Regulation, XIX of 1810.

(ii) Section 5 of the Religious Endowments Act, 1863 (XX of 1863)

(iii) The Charitable Endowments Act, 1890 (VI of 1890).

(iv) The Charitable and Religious Trust Act, 1920 (XIV of 1920).

75. Repeal.—The following Acts are hereby repealed :—

Name of the Act	Extent of Repeal
1. The Bengal Wakf Act, 1934 (XIII of 1934)	Whole
2. The Mussalman Wakfs (Bombay Amendt.) Act, 1933 (XVIII of 1933).	Whole
3. Mussalman Wakfs Act, 1923 (XLII of 1923) in so far as it extends to the States where this Act comes into force.	Whole

76. Recovery of dues by distress.—Every sum recoverable under section 45 and the contribution under section 59 may be recovered by the Board by means of distress of sale of movable property belonging to the person liable for payment, in accordance with the rules framed by the State Government in this behalf.

STATEMENT OF OBJECTS AND REASONS

The management of Wakfs though it vests immediately in a mutawalli, is a subject which requires the supervision of the State. The need for supervision has been felt, and in addition to various enactments dealing with the subject of charitable endowments, the Musalman Wakf Act 1923, (No. 42 of 1923) was enacted for the whole of India. This Act merely provides for the submission of audited accounts by the Mutawallis, to the district judges. This Act did not prove of much practical value. The Musalman Wakf (Bombay Amendment) Act 1935, (XVIII of 1935) amended the Musalman Wakf Act 1923 (42 of 1923). The Bengal Wakf Act 1934, (No. XIII of 1934) was enacted to create a machinery for the supervision of wakfs in Bengal. The U P followed suit and the United Provinces Muslim Wakfs Act 1936 (XIII of 1936) was passed creating a Central Wakf Board. Similarly Bihar also passed a legislation almost on the same lines. The working of these Acts has brought out the necessity of some amendments. Further many of the States have got no Act for the purpose. It is therefore necessary, that one uniform and consolidated legislation may be passed by the Centre, which may be adopted as a model Act by the various States. It is with this view that the present Bill is introduced.

MOHAMMAD AHMAD KAZMI.

BILL No. 64 OF 1952

A Bill to prevent procreation of human beings of undesirable physical and mental conditions by certain types of people.

WHEREAS it is expedient in the interests of health and well-being of society and the financial resources of the State, to prevent certain types of people suffering from highly undesirable physical and mental conditions, from procreating human beings like unto themselves

Be it enacted by Parliament as follows:—

1. Short title, extent and commencement.—(1) This Act shall be called the Sterilisation of the Unfit Act, 1952

(2) It extends to the whole of India, except the State of Jammu and Kashmir.

(3) It shall come into force on such dates as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(1) "board" shall mean a board of medical experts constituted under this Act,

(2) "Court" means the District Court of the district in which the board is situated.

(3) "prescribed method" shall mean vasectomy, urethrectomy, salpingectomy or ovariectomy, or such other method.

(4) "sterilisation" shall include such medical or surgical treatment that would effectively prevent any person, male or female, from giving birth to a child

(5) "unfit" shall mean any person, male or female, who suffers from such a type of leprosy or syphilis, insanity or imbecility congenital or otherwise, that he or she is likely to give birth to children like himself or herself unless sterilised.

3. Constitution of the Board.—Government may, by notification in the Official Gazette, constitute a board for each district including metropolitan cities with the district medical officer as the chairman and four registered medical practitioners, of whom two shall be official and two shall be non-official.

4. Procedure for sterilisation.—(1) Whenever information is given to the chairman of the board that any person is unfit the board shall procure the presence of that person and examine him.

(2) On a written requisition of the chairman of the board to any Magistrate of the First Class having jurisdiction over the place where that person lives, summons shall be issued by that court to that person in order to appear before it and that person shall, by an order, be bound over to appear before the board:

Provided that the date fixed for appearance before the board shall not be less than twenty-one days from the date of such order.

(3) A copy of that order shall be furnished to that person forthwith free of cost.

(4) If on the date fixed for appearance before the board, the person does not appear before it, the chairman of the board shall report such fact to the Superintendent of Police of the District.

(5) The Superintendent of Police shall thereupon order the arrest of that person by an officer subordinate to him not lower than the rank of a Circle Inspector of Police and for production before the board.

5. Examination of person.—(1) The board shall then proceed to examine the person with reference to his unfitness. If the majority of the board decide that he is unfit a declaration to that effect shall be made in writing. But if the majority hold that he is not unfit he shall be discharged forthwith.

(2) A copy of such declaration shall be furnished to that person the same day free of cost.

6. Sterilisation of person.—After such a declaration the person may be sterilised on an appointed day by the prescribed method without dismembering any of his limbs or organs:

Provided that the date fixed for sterilisation shall not be less than twenty-one days of such declaration of unfitness referred to in section 5.

7. Appeals.—(1) Any person summoned shall have the right to appeal to the court against the order of the Magistrate of the First Class binding him over to appear before the board.

(2) Any person who has been declared unfit by the board shall have the right to appeal to the court against such declaration.

(3) If on hearing the appeal the court finds that the order binding over the person or the declaration that he is unfit is untenable for any reason, that person shall be discharged and the board shall not proceed against that person any further.

(4) Nothing shall prevent the court from granting a stay pending disposal of any appeal.

(5) An appeal under this Act shall lie within fifteen days of the order or declaration as the case may be.

8. Penalty for false information.—Anyone giving information against any person that he is unfit without just or reasonable cause with a view to induce the board to proceed under this Act, and if that information is found to be false or fraudulent or given with a view to annoy, intimidate, defame or disgrace that person, shall be liable to a fine of five hundred rupees.

9. Miscellaneous.—(1) The Government shall have power to prescribe the method of sterilisation, the places where it should be done and the class of officers who will be authorised to perform sterilisation.

(2) No suit or prosecution or other legal action shall lie against any member of the board for anything which is in good faith done or intended to be done under this Act.

STATEMENT OF OBJECTS AND REASONS

It is a social tragedy to allow lepers, syphilitics, the insane, the congenital idiots and the like to bring forth children. Their own lives are miserable. They should not be allowed, in the better and larger interests of society to multiply themselves. A positive action to prevent misery and to improve the general health of the nation is called for. A perceptible increase in these types of people, calls for a legal provision to control and avoid it. The Bill is intended to serve this purpose.

S. V. RAMASWAMY

BILL No. 62 OF 1952

A Bill further to amend the Indian Penal Code, 1860.

WHEREAS it is expedient to amend the Indian Penal Code (XLV of 1860), in the manner hereinafter appearing;

BE it enacted by Parliament as follows:—

1. Short title and extent.—(1) This Act may be called the Indian Penal Code (Amendment) Act, 1952.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. Amendment of section 497, Act XLV of 1860.—In section 497 of the Indian Penal Code, 1860, the words "In such case the wife shall not be Punishable as an abettor" shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The authors of the Indian Penal Code say:—

"Though we well know that the dearest interests of the human race are closely connected with the chastity of women and the sacredness of the nuptial contract, we cannot but feel that there are some peculiarities in the state

of society in this country which may well lead to a human man to pause before he determines to punish the infidelity of wives. The condition of women of this country is, unhappily, very different from that of women of England and France; they are very often neglected for other wives while still young: they share the attentions of a husband with several rivals. To make laws for punishing the inconstancy of the wife, while the law admits the privilege of the husband to fill his zenana with women, is a course which we are most reluctant to adopt."

But now the circumstances mentioned by the authors of the Penal Code have practically disappeared. In States like Bombay polygamy among the Hindus has been prohibited by law. Among the Christians and the Parsis the institution of polygamy is non-existent. Among the Muslims polygamy is not still prohibited by law. The Constitution also prohibits discrimination on grounds of religion, race, caste, sex or place of birth and every person is equal before Law.

The object of this Bill is therefore to make wife also liable to punishment under section 497 of the Indian Penal Code, 1860, as an abettor when guilty of the offence of adultery.

FULSINGHI B. DABHI.

BILL NO. 56 OF 1952

A Bill to provide for the prevention of bigamous marriages.

WHEREAS it is expedient to provide for the prevention of bigamous marriages among all classes of people;

It is hereby enacted as follows:—

1. Short title and extent.—(1) This Act may be called the Prevention of Bigamous Marriages Act, 1952.

(2) It extends to the whole of India.

2. Application of Act.—The provisions of this Act shall apply to all classes of persons amongst whom bigamous marriages are at present permissible on the ground of religion, caste, custom or on any other ground whatsoever.

3. Definitions.—In this Act unless there is anything repugnant in the subject or context:—

(1) "bigamous marriage" means the marriage of a person during the life time of his or her spouse, if the marriage of such person with such spouse has not been dissolved or declared void by a Court of competent jurisdiction or has not been dissolved or is not void according to the custom or usage of the community to which either of the parties to such marriage belongs but does not include the marriage of a person during the life time of his or her spouse if such spouse at the time of such marriage shall have been continually absent from such person for the space of seven years and shall not have been heard of by such person as being alive within that time provided that the person contracting such marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

(2) minor means any person who is under sixteen years of age.

4. Bigamous marriages to be void.—Notwithstanding any law, custom or usage to the contrary a bigamous marriage shall be void if it is contracted after the coming into force of this Act.

5. Penalty for bigamous marriage.—Notwithstanding any law, custom or usage to the contrary whoever not being a minor contracts a bigamous marriage which is void under section 4 shall on conviction be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine.

6. Penalty for solemnising bigamous marriage.—Whoever performs, conducts or abets any bigamous marriage shall, on conviction be punishable with imprisonment of either description for a term which may extend to six months or with fine or with both unless he proves that he had reason to believe that the marriage was not a bigamous marriage.

7. Penalty for person having charge of minor concerned in bigamous marriage.—(1) When a minor contracts a bigamous marriage which is void under section 4, any person having charge of the minor whether as parent or guardian or in any other capacity lawful or otherwise, who does any act to promote the marriage or permits it to be solemnised or negligently fails to prevent it from being solemnised shall, on conviction be punishable with imprisonment of either description for a term which may extend to six months or with fine or with both.

(2) For the purpose of this section it will be presumed unless and until the contrary is proved, that where a minor has contracted a bigamous marriage which is void under section 4, the person having charge of such minor whether as parent or guardian or in any other capacity lawful or otherwise has negligently failed to prevent the marriage from being solemnised.

8. Jurisdiction for offences under sections 6 and 7.—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (V of 1898), no Court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try any offence punishable under section 6 or 7.

9. Offences under this Act to be cognisable.—Offences under this Act shall be cognisable.

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to prevent bigamous marriages throughout India. This social reform is necessary in the interests of Indian womanhood. This reform is over-due and a measure like this should have been on the Statute Book long ago.

H. V. PATASKAR.

BILL No. 73 OF 1952

A Bill further to amend the Code of Criminal Procedure, 1898.

WHEREAS it is expedient further to amend the Code of Criminal Procedure (V of 1898) for the purposes hereinafter appearing:

BE it enacted by Parliament as follows:—

1. Short title.—This Act may be called the Code of Criminal Procedure (Amendment) Act of 19

2. Repeal of sections 266, 267, 268 and 269, Act V of 1898.—Sections 266, 267, 268 and 269 of the Code of Criminal Procedure (V of 1898) (hereinafter referred to as the said Act) are hereby repealed.

3. Amendment of section 272, Act V of 1898.—In section 272 of the said Act,—

(i) the words “to choose jurors or assessors as hereinafter directed and”, and

(ii) the proviso,

shall be omitted.

4. Repeal of sections 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 284A, 285, 285A, Act V of 1898.—Sections 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 284A, 285 and 285A of the said Act are hereby repealed.

5. Substitution of new section for section 293, Act V of 1898.—For section 293 of the said Act, the following shall be substituted, namely:—

“293. *Judgement by the Court.*—When the case for the defence and the prosecutor’s reply (if any) are concluded, the Court shall deliver judgment.”

6. Repeal of sections 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308 and 309, Act V of 1898.—Sections 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308 and 309 of the said Act, are hereby repealed.

7. Amendment of section 375, Act V of 1898.—In sub-section (2) of section 375 of the said Act, the following shall be omitted, namely:—

“Such enquiry shall not be made, nor shall such evidence be taken in the presence of juror or assessors, and,”.

8. Amendment of section 418, Act V of 1898.—In section 418 of the said Act,—

(i) in sub-section (1), the words “except where the trial was by jury, in which case the appeal shall lie on a matter of law only”, and

(ii) sub-section (2),

shall be omitted.

9. Amendment of section 423, Act V of 1898.—Sub-section (2) of section 423, of the said Act, shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The jury system is unnecessary and assessor system is useless.

Oftentimes the Jury returns perverse verdicts and Sessions Judges are generally disinclined to submit such cases to the High Court under section 307 of the Code of Criminal Procedure for a variety of reasons. Whatever justification there might have been for the introduction of the system, it is out-moded. Our Judiciary is one of the best in the world and the robust independence of our Judiciary is the sentinel guarding the liberty of the individual. Should there be any mistake, there are a series of appellate courts to rectify.

The economy involved in their abolition will be enormous, and the Code will become much simplified.

Hence this Bill.

S. V. RAMASWAMY.

BILL No. 66 OF 1952

A Bill to restrain the custom of taking or giving of dowry in marriages

Be it enacted by Parliament as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Dowry Restraint Act, 19 .

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force at once, on such date or dates as the Government may by notification in the official Gazette appoint.

2. Definitions.—In this Act unless there is anything repugnant in the subject or context,—

“dowry” means anything paid in cash or kind as a part of the contract of any betrothal or marriage, by the father, mother, or guardian of a bride to a bridegroom, or to his father, mother or guardian and *vice versa*, and includes:—

(a) *Dehej*; and

(b) price of a bride, but does not include “*Stridhan*” as understood in Hindu Law and “*Mahr*” or dower as understood in Mohamedan Law.

3. Punishment for acceptlug dowry.—Any person who takes dowry shall on conviction be punishable with simple imprisonment which may extend to three months or with fine which may extend to the amount or value of the dowry taken or with both.

4. Penalty for giving dowry or abetment thereof.—Any person who gives dowry or abets the taking or giving of dowry shall on conviction be punishable with simple imprisonment which may extend to one month or with fine, which may extend to one thousand rupees or with both.

5. Procedure for trying offences.—An offence under section 3 or 4 of this Act shall be non-cognisable and shall be triable by a magistrate specially empowered in this behalf.

6. Security against false or vexatious proceedings.—No Court shall take cognisance of any case under this Act unless a complaint is filed and a sum of rupees fifty is deposited therewith as a security against any false or vexatious proceedings.

7. Notice to show cause.—No Court shall proceed with a complaint under this Act unless it gives the accused a chance to show cause why he should not be prosecuted under this Act.

STATEMENT OF OBJECTS AND REASONS

Among many communities in this country, there exists an evil custom of taking and offering dowry. As a result of this custom many persons have to pay exorbitant sums to secure bridegrooms for their daughters. Again, in some parts there is regular traffic of selling and buying girls. Under these circumstances, it is necessary to introduce legislation to eradicate this evil custom.

UMA NEHRU.

BILL No. 41 OF 1952

A Bill further to amend the Indian Penal Code, 1860

WHEREAS it is expedient further to amend the Indian Penal Code (XLV of 1860) in the manner hereinafter appearing:

BE it enacted by Parliament as follows:—

1. **Short title, extent and commencement.**—(1) This Act may be called the Indian Penal Code (Amendment) Act, 1952.

(2) It shall extend to such parts of the Union of India where the Indian Penal Code and all amended provisions thereof are in force at present.

(3) It shall come into force at once.

2. **Amendment of Section 53, Act XLV of 1860.**—In section 53 of the Indian Penal Code (XLV of 1860) (hereinafter referred to as the said Act) the words "*First,—Death*" shall be omitted and the clauses *Secondly, Fourthly, Fifthly, and Sixthly*, shall be renumbered *First, Secondly, Thirdly, and Fourthly*, respectively.

3. **Amendment of section 121, Act XLV of 1860.**—In section 121 of the said Act the words "death, or" shall be omitted.

4. **Amendment of Section 132, Act XLV of 1860.**—In section 132 of the said Act the words "with death or" shall be omitted.

5. **Amendment of Section 194, Act XLV of 1860.**—In section 194 of the said Act the words "either" and "death or" shall be omitted.

6. **Amendment of Section 302, Act XLV of 1860.**—In section 302 of the said Act the words "death, or" shall be omitted.

7. **Omission of Section 303, Act XLV of 1860.**—Section 303 of the said Act shall be omitted.

8. **Amendment of Section 305, Act XLV of 1860.**—In section 305 of the said Act the words "death or" shall be omitted.

9. **Amendment of Section 307, Act XLV of 1860.**—In section 307 of the said Act the following shall be omitted, namely:—

"Attempts by life convicts.—When any person offending under this section is under sentence of transportation for life, he may, if hurt is caused, be punished with death."

10. **Amendment of Section 396, Act XLV of 1860.**—In section 396 of the said Act the words "death, or" shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The object of the Bill is to abolish sentence of death prescribed for different offences under the Indian Penal Code. Experience has shown that the mode of punishment has not only failed to achieve its object of creating deterrent effects but has in many cases put an end to human lives which, if spared, might have proved very precious to the country. The abolition of death sentence will enable the state to prevent the irreparable mischief arising out of miscarriage of justice. The main provision of the Bill will do away with sentence of death altogether as a mode of punishment.

ROHINI KUMAR CHAUDHURI.

BILL NO. 59 OF 1952

A Bill to provide for a right of divorce among all Communities of Hindus in certain circumstances.

WHEREAS it is expedient to provide for a right of divorce among all communities of Hindus in certain circumstances;

It is hereby enacted as follows:—

1. Short title and extent.—(1) This Act may be called the Hindu Divorce Act, 1952 .

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. Definitions.—In this Act unless there is anything repugnant in the subject or context,—

(a) "Court" means wherever there is a High Court with exclusive original jurisdiction, the High Court and elsewhere, the Court of a District Judge;

(b) "Desert" means to desert without reasonable cause and without the consent or against the will of the spouse;

(c) "Hindu" includes a Sikh, Jain, Buddhist, a follower of the Arya or Bramha Samaj or a convert to Hinduism;

(d) "husband" means a Hindu husband;

(e) "marriage" means a marriage between Hindus whether contracted before or after the coming into operation of this Act;

(f) "Wife" means a Hindu wife.

3. Grounds for Divorce.—(1) A husband or wife may sue for divorce on any of the following grounds, namely:—

(a) that the defendant was impotent at the time of the marriage and continues to be so at the time of the institution of the suit;

(b) that the defendant is incurably of unsound mind and has been continuously so for a period of not less than three years or is an idiot;

(c) that the defendant is suffering from a virulent and incurable form of leprosy;

(d) that the defendant has deserted the plaintiff for a continuous period of three years;

(e) that the defendant has not been heard of as being alive for the space of seven years by those persons who would have naturally heard of it had the defendant been alive;

(f) that the defendant, if a husband, has any other woman as a concubine, and if a wife, is a concubine of any other man or leads the life of a prostitute:

Provided that no such suit shall lie, except under clause (d) or (f) if the husband and wife have lived a married life for twenty years after attaining majority.

(2) A wife may also sue for divorce on the ground that her husband had married another wife and such wife is living at the time of the institution of the suit.

4. Suits for judicial separation.—Notwithstanding anything contained in Section 3—

(1) a husband or wife may sue for judicial separation on the ground that the spouse is suffering from leprosy not contracted from the plaintiff,

(2) a husband may sue for judicial separation on the ground that his wife is a concubine of any other man or leads the life of a prostitute,

(3) a wife may sue for judicial separation,—

(a) on the ground that her husband had married another wife and such wife is living at the time of the institution of the suit, or

(b) on the ground that her husband has any other woman as a concubine, or

(c) on the ground of legal cruelty.

5. Courts in which suits to be instituted.—Every suit under this Act shall be instituted in the Court,—

(1) within the limits of whose jurisdiction the defendant resides at the time of the institution of the suit, or

(2) in the Court within the limits of whose jurisdiction the plaintiff and defendant last resided together, or

(3) in the Court within the limits of whose jurisdiction plaintiff resides if such Court after recording its reasons grants leave so to do.

6. Alimony pendente lite.—In any suit under this Act if the wife shall not have an independent income sufficient for her support and the necessary expenses of the suit, the Court, on the application of the wife, may order the husband to pay her the expenses of the suit, and monthly during the suit such sum not exceeding one-fifth of her husband's net income as the Court, considering the circumstances of the parties, shall think reasonable.

7. Decrees in suit.—In any suit under Section 3 or 4 whether defended or not, if the Court be satisfied that any of the grounds set forth in either of those sections for granting relief exist, the Court shall decree such relief accordingly.

8. Permanent alimony.—(1) If the Court thinks fit, it may, at the time of passing any decree under this Act or subsequent thereto, on application made to it for the purpose, order that the husband shall, while the wife remains chaste and unmarried, secure to the wife, for her maintenance and support if necessary, by a charge on the husband's property such gross sum or such monthly or periodical payment of money for a term not exceeding her life as, having regard to her own property, if any, her husband's property and the conduct of the parties, shall be deemed just.

(2) If the Court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party vary, modify or rescind such order in such manner as the Court may deem just.

(3) If the Court is satisfied that the wife in whose favour an order has been made under sub-section (1) or (2) has remarried or has not remained chaste, it shall vary or rescind the order.

9. Payment of alimony to wife or to her trustee.—In all cases in which the Court shall make any decree or order for alimony it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court may seem expedient, and may from time to time appoint a new trustee, if for any reason it shall appear to the Court expedient so to do.

10. Disposal of joint property.—In any suit under this Act, the Court may make such provisions in the decree as it may deem just and proper with respect to property presented at or about the time of marriage which may belong jointly to both the husband and wife.

11. Suits may be heard with closed doors.—A suit under this Act shall be tried with closed doors at the instance of either party or if the Court thinks fit.

12. Provisions of Civil Procedure Code to apply to suits under this Act.—Save as herein otherwise provided, the provisions of the Code of Civil Procedure, 1908 (Act V of 1908), shall, so far as may be, apply to all proceedings instituted under this Act including proceedings in execution and orders subsequent to decree.

13. Enforcement of and appeal from orders and decrees.—All decrees and orders made by the Court in any suit or proceeding under this Act shall be enforced in like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction are enforced and may be appealed from, under the law for the time being in force;

No appeal as to costs.—Provided that there shall be no appeal on the subject of costs only:

Provided further that such appeal shall be instituted within three calendar months after the decision appealed from shall have been pronounced.

14. Liberty to parties to marry again.—When the time for an appeal against any decree granting a divorce shall have expired, and no appeal shall have been presented against such decree, or when any such appeal shall have been dismissed, or when in the result of any appeal a divorce has been granted and six months have elapsed thereafter but not sooner, it shall be lawful for the parties thereto to marry again, as if the prior marriage had been terminated by death.

15. Custody of children.—In any suit under this Act, the Court may from time to time pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, the marriage of whose parents is the subject of such suit, and may, after the decree, upon application by petition for the purpose, make, revoke, suspend or vary from time to time all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the suit for obtaining such decree were still pending.

16. Rules.—Government may by notification in the Official Gazette, and subject to the condition of previous publication, make rules for the purpose of carrying into effect the provisions of this Act.

17. Saving.—Nothing contained in this Act—

(1) shall apply to Hindus marrying under the provisions of the Special Marriage Act, 1872; or

(2) shall affect any right of divorce or judicial separation recognised by custom.

STATEMENT OF OBJECTS AND REASONS

The Bill is intended to provide a right of divorce amongst all communities of Hindus. Such a right exists amongst all other communities already. The proposed Hindu Code had made provision for such a right amongst many other more controversial matters, but it is not necessary to keep such a measure pending. The State of Bombay has already passed such a measure and is the prevailing law in this respect in that State. This piece of social reform is over due. Such a law has been in force in the State of Bombay for over five years and the results justify the passing of such a measure applicable to the whole of India.

HARI VINAYAK PATASKAR.

BILL No 81 OF 1952

A Bill to make provision for the prevention of juvenile vagrancy and begging.

BE it enacted by Parliament as follows:—

1. Short title and extent.—(1) This Act may be called the Prevention of Juvenile Vagrancy and Begging Act, 19 .

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. Definitions.—In this Act, unless the context otherwise requires,—

“Vagrancy” shall include wandering, remaining idle or disorderly.

“Begging” shall include act of acquiring the habit of asking alms or charity.

“Juvenile” shall include a person below the age of eighteen.

3. Persons committing offence.—If a person below the age of eighteen either of whose parents or any guardian, or any other person giving protection to such a person is alive, is found to be wandering about or begging on trains, in public places, or from door to door by singing songs or otherwise, he as well as his parents or guardian or protector shall be guilty of committing an offence under this Act.

4. Punishment for juvenile vagrancy or begging.—Any person who commits offence under section 3 shall be punishable with rigorous imprisonment which may extend to three months or with fine which may extend to two hundred rupees or with both

STATEMENT OF OBJECTS AND REASONS

Begging by persons is a blot against national honour and it is more so when it is resorted to by able-bodied juvenile persons. This Bill is intended to stop vagrancy and begging

M. L. DWIVEDI.

BILL No. 75 OF 1952

A Bill to control the export and the standardisation of handloom cloth

WHEREAS it is expedient to provide for the control of the export and the standardisation of production of handloom cloth:

BE it enacted by Parliament as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Control of Export and Standardisation of Handloom Cloth Act, 1952.

(2) It extends to the whole of India, except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint.

2. Definitions.—In this Act unless there is anything repugnant in the subject or context—

(1) “board” shall mean a Handloom Board constituted under the provisions of this Act.

(2) “broker” shall mean any person who negotiates and makes contracts on behalf of others for the sale or purchase of cloth, but neither stocks such cloth for delivery on such sales nor takes possession of such cloth on such purchases.

(3) “cloth” shall mean cloth woven on handlooms either wholly from mill-made cotton yarn or partly from such yarn or any other material containing not less than ten per cent. of cotton by weight.

(4) “collector” shall mean the Collector of the district in which the notified area is situated.

(5) “commission agent” shall mean a person who on behalf of another person and in consideration of a commission makes or offers to make a purchase or sale of cloth or does not offer to do anything necessary for completing or carrying out such sale or purchase.

(6) “dealer” shall mean a person who sells cloth or stores it for sale whether on his own account or as a commission agent, whether in conjunction with any other business or not.

(7) “director” shall mean Director of Industries of any State.

(8) “handloom” means a weaver's loom worked by human labour in which yarn or thread is woven into fabric.

(9) “hawker” shall mean a person other than an independent weaver who goes from place to place or house to house carrying or exposing cloth for sale or exposing samples of such cloth to be afterwards delivered.

(10) “independent weaver” shall mean any person who himself weaves cloth on a handloom under his control or has the cloth woven by members of his family on such handloom.

(11) “licence” shall mean a licence granted under this Act by the licensing authority.

(12) “licensing authority” shall mean the Collector and includes any officer authorised by the Collector to exercise the powers and perform the functions of the licensing authority under this Act.

(13) "loom certificate" shall mean a certificate issued by the licensing authority for an active handloom.

(14) "master weaver" shall mean any person who engages weavers other than members of his family for the production of cloth and includes a weavers' co-operative society registered under the Co-operative Societies Act, 1912, handloom factory or any other organization which engages weavers for the production of handloom cloth.

(15) "notified area" shall mean any area notified under sub-section (1) of section 12 as altered by notification or notifications if any, under sub-section (2) of section 12.

(16) "prescribed" shall mean prescribed rules or bye-laws made under this Act.

(17) "prescribed marking" shall mean marking prescribed by the board and required to be stamped on the cloth in respect of anyone or more of the following or part thereof:

(a) the description, number, quantity, length and width or quality of the cloth.

(b) the number of ends and picks, the count of yarn used for warp and for weft.

(c) the fastness of dyes used in the production of cloth.

(d) the materials on which the cloth is produced.

(e) the address of the stamping centre or the licensee who fixed the stamps.

(18) "standard specification" shall mean specification prescribed by the Board for any particular variety of cloth produced in the notified area or part thereof.

(19) "authorised handloom exporters" shall include Co-operative Societies and/or Companies registered under the Indian Companies Act, 1913, of master weavers or master weavers and independent weavers, engaged in the production of handloom cloth.

3. Kind of cloth to be exported from India.—No handloom cloth shall be exported out of India unless it bears the prescribed marking.

4. Persons who can export handloom cloth.—No handloom cloth shall be exported out of India except by the authorised handloom exporters.

5. Special concessions to authorised handloom exporters.—(1) The authorised handloom exporters shall be supplied yarn directly from the mills in required quantities at mill rates and they shall have priority over all others in the matter of distribution of yarn.

(2) No sales tax shall be levied on yarn supplied to them or handloom cloth sold by them and the goods produced by them shall not be subject to any excise or export duty.

(3) Special concessional rates in Indian railways and in ships subsidised by the Central Government shall be given to them for the movement of their cloth out of India.

(4) Special marketing officers shall be attached to Indian Embassies and Trade Commissioners abroad to assist them in the marketing of their goods and for expanding the market for them.

6. Central Handloom Board.—The Central Government shall establish a Central Handloom Board to carry out the aims and objects of this Act generally and in particular for the following purposes:—

(i) framing rules and regulations for the export of high quality handloom goods out of India;

(ii) devising ways and means of enforcing the same;

(iii) supervising the work of state handloom boards;

(iv) acting as a liaison between the Indian Trade Commissioners abroad and the authorised handloom exporters in India;

(v) organising trade delegations to foreign countries to consolidate and expand the markets for handloom cloth;

(vi) collection and dissemination of information regarding all matters relating to production and marketing;

(vii) formulating schemes for the extension and improvement of production of cloth within the notified area and their implementation;

(viii) propaganda in favour of technical improvement of production and provision of facilities for teaching improved methods of production of cloth;

(ix) holding of exhibitions and ocular display of improved methods of production of cloth;

(x) publicity and provision of facilities for marketing;

(xi) provision and arranging facilities for the examination and testing of different fabrics, processes and practices and for any investigation or research that may be necessary;

(xii) establishing and maintaining libraries and museums for purposes of furthering the progress of standardisation and improving the technique of production and processing of cloth;

(xiii) the purchase or hiring out improved appliances connected with the industry; and

(xiv) such other purposes as may be authorised by the Government in this behalf by general or special order for the development of the handloom industry and improvement of the economic condition of the weaver.

7. Constitution of the Central Board.—(1) The Central Board shall consist of twenty-one members with the Minister of Industries at the Centre as the Chairman. Of these five shall be officials, and the rest shall be non-officials. Representation to the States on the board may be given in proportion to the looms in the respective States.

(2) The non-official members shall be nominated for three years in consultation with the Minister of Industry of a State and representative bodies connected with the industry.

(3) The Secretary of the Ministry of Industries shall be *ex-officio* Secretary of the Board.

8. Finances of the Board.—The Central Government shall set apart such funds as may be necessary to carry out any or all of the objects mentioned in section 6.

9. State Handloom Board.—(1) The State Government may establish a State Handloom Board to supervise and control the work of the Handloom Boards in notified areas and to carry out any of the objects mentioned in clauses (vi), (vii), (viii), (ix), (x), (xi), (xii), (xiii) and (xiv) of section 6.

(2) It shall consist of fifteen members, with the Minister for Industries of a State as the Chairman. Three of the members shall be officials of whom the Director of Industries and the Registrar of Co-operative Societies of a State shall be *ex-officio* members; and the rest shall be non-officials.

(3) The non-official members may be appointed for three years in consultation with the representative bodies connected with the industry.

(4) Section of the Department of Industries shall be *ex-officio* Section of the Board.

10. Finances of State Boards.—The State Government shall set apart such funds as may be necessary to carry out any or all of the objects mentioned in sub-section (1) of section 9.

11. Notification of intention to promote standardisation.—The State Government may, by notification in the Official Gazette declare their intention to promote the general adoption of certain prescribed standards in connection with the production of such cloth in such area or areas as may be specified in the notification. Such notification shall state that any objections or suggestions which may be received by the State Government, within a period to be specified in the notification, will be considered by them. A copy of the notification will be published in the prescribed manner.

12. Declaration of notified area.—(1) After the expiry of the period specified in the notification under section 11 and after considering such objections or suggestions as may be received before such expiry, the State Government may, by a notification in the Official Gazette, or in any other manner prescribed, declare the area or areas specified in the notification under section 11 or any portion thereof to be a notified area for the purpose of this Act.

(2) Subject to the provisions of section 11, the State Government may by notification—

(a) exclude from a notified area any area comprised therein and defined in such notification, or

(b) include in any notified area, any area defined in such notification.

13. Establishment of Handloom Boards and Stamping Centres.—(1) The State Government shall establish a board for every notified area. It shall be the duty of the board to enforce the provisions of this Act, and the rules and bye-laws made thereunder in such notified area.

(2) Every board shall establish in such notified area such number of stamping centres as the Collector may direct from time to time for the purpose of stamping cloth with the prescribed markings.

14. Registration of handlooms in the notified area.—No person shall, within a notified area, set up, use, continue or allow to be continued any handloom for the production of cloth except under and in accordance with the conditions of a loom certificate granted to him by the Collector.

15. Standardisation of production and stamping cloth.—(1) The board shall, with the approval of the director, prescribe, standard specifications in respect of cloth produced in the notified area or parts thereof and the prescribed markings to be stamped on such cloth.

(2) Save as hereinafter provided all cloth produced in a notified area and intended for export outside India, shall be stamped in accordance with the provisions of this section.

(3) Only such cloth as conforms to the standard specifications prescribed shall be stamped with prescribed markings:

Provided that the board may with the approval of the director exempt from the provisions of this section any cloth produced by any specific independent weaver or class of independent weavers.

16. Issue of licence to stamp.—(1) No person other than officer of the board specially authorised for the purpose shall, within a notified area set up, establish or use, continue or allow to be continued, any place for the stamping of cloth with the markings prescribed by the board except under and in accordance with the conditions of a licence granted to him by the Collector.

(2) Such licence shall be granted only to authorised handloom exporters who apply for it in the prescribed form, on payment of the prescribed fees.

(3) The person licenced to stamp the prescribed markings shall be held responsible for the correctness of the description and details given in the markings made by himself or by others acting on his behalf.

17. Prohibition against sales of unstamped cloth.—(1) No master weaver or dealer or independent weaver who has not been exempt under Section 15, shall despatch or deliver to any person to be exported out of India whether in pursuance of a sale or otherwise, any cloth unless it has been stamped with the marking prescribed by the board.

(2) Where a cloth stamped under the Act is not sold as a whole that portion of the cloth containing the prescribed markings shall be sold last.

18. Licensing of master weaver, dealer, commission agent, broker.—(1) No master weaver or dealer shall sell cloth or store it for sale or carry on business as a commission agent or broker in cloth in any State except under and in accordance with the terms and conditions of a licence granted to him under this section by the licensing authority.

(2) Where a person, other than a hawker, has more than one place of business, whether in the same town or village or different towns and villages, he shall obtain a separate licence in respect of such place of business.

(3) The Collector may in his discretion grant or refuse to grant a licence under this section.

(4) Subject to such rules as may be made by the State Government the Collector may, either on the report of the board or by himself and after such inquiry as he deems fit, cancel or suspend a licence granted under this section.

19. Obligation of Licencees.—Every person to whom a licence is granted under sections 16 and 18 shall comply with the provisions of this Act, the rules and the bye-laws made thereunder and the conditions specified in the licence.

20. Constitution of the Board in notified areas.—(1) Every board shall consist of such number of members not exceeding seven as may be fixed for it by the State Government.

(2) The Deputy Registrar of Co-operative Societies having jurisdiction over the notified area and the industries of the district, shall be a member of the board.

(3) The State Government shall appoint non-officials as members in consultation with the Collector and representative bodies connected with the industry for a period of three years.

(4) The State Government shall appoint Assistant Registrars of Co-operative Societies as Secretaries of the board.

21. Levy of Fees by the Board.—The board shall, subject to such rules as may be made in this behalf levy fees for stamping the prescribed marking on cloth produced in the notified area at such rates as it may determine:

Provided that until the board has determined the rates of such fees, it shall levy fees at the rates specified in the schedule to this Act.

Explanation.—For the purpose of this section all cloth found in a notified area, shall, unless the contrary is proved, be presumed to have been produced in the notified area.

22. Levy of subscriptions for market reports etc.—The board may subject to such rules as may be made in this behalf levy a subscription for collecting and disseminating among the subscribers information as to any matter relating to the production or making of cloth.

23. Handloom Board Fund.—All moneys received by the board shall be paid into a fund to be called the Handloom Board Fund. All expenditure incurred by the board under or for the purposes of this Act, shall be defrayed out of the said fund; and any surplus remaining after such expenditure has been met shall be invested in such manner as may be prescribed by rules.

24. Purposes for which Fund may be expended.—Subject to the provisions of Section 23 the Handloom Board Fund shall be expended for any or all of the objects mentioned in clauses (vi), (vii), (viii), (ix), (x), (xi), (xii), (xiii) and (xiv) of Section 6.

25. Penalties.—Whoever affixes or causes to be affixed prescribed markings which are false in any material particular shall be punished with a fine which may extend to rupees five hundred.

Explanation.—A trade description of length stamped on grey, white or coloured cloth shall not be deemed to be false in a material particular unless:

(a) where a single length is stamped the description exceeds the actual length by more than four inches in pieces stamped as ten yards long and under five inches in pieces stamped as above ten yards and up to and including twenty yards, six inches in pieces stamped as above twenty yards.

(b) a trade description of length stamped on grey, white or coloured cloth shall not be deemed to be false in a material particular unless the description exceed the actual width by half an inch in pieces stamped as thirty-six or less in width, $\frac{3}{4}$ " in pieces stamped as over thirty-six or under forty-eight in width, one inch in pieces stamped as forty-eight or more in width.

26. Composition of offences.—(1) Whoever contravenes the provisions of sections 14, 17, 18 and 19 shall be punishable with fine which may extend to rupees two hundred and in the case of continuing contravention with a further fine which may extend to rupees one hundred for every day during which the contravention is continued after conviction.

(2) Any person specially empowered in this behalf may accept, from any person reasonably suspected of having committed an offence punishable under this Act, other than an offence punishable under section 25, a sum of rupees fifty by way of compensation for the offence and on the payment of such sum to such person no proceeding shall be taken against such persons in respect of such offences.

27. Power to make rules.—(1) The State Government may, either generally, or specially for any notified area or areas make rules consistent with this Act for carrying out all or any of the purposes thereof.

(2) In particular and without prejudice to the generality of the foregoing sub-section and in conformity with any directions that may be given by the central board, such rules may provide for and regulate—

(a) the maximum annual fees which may be levied in respect of licences granted under this Act and the recovery of such fees,

(b) the maximum rates of subscription which may be levied by area board under this Act and the recovery of such subscriptions,

(c) the form in which and the conditions under which licences granted under this Act shall be issued or renewed and the fees to be charged therefor,

(d) the registration of handlooms, the form in which and the conditions under which the registration may be renewed and the fees to be charged therefor,

(e) the periodical inspection of verification of looms, licences and stamping places,

(f) the markings to be prescribed by the board in order to bring about the standardisation of production,

(g) the specification to be prescribed by the Board in respect of cloth produced in the notified area,

(h) composition of offences.

(3) (a) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication,

(b) all rules made under this section shall be published in the Official Gazette and on such publication shall have the effect as if enacted in this Act,

(c) all such rules shall be laid before the State Legislature for information.

28. Trial of offences.—(1) No offence made punishable by this Act or any rule or bye-law made thereunder shall be tried by a court inferior to that of a Presidency Magistrate or Magistrate of the First Class.

(2) Prosecutions made under this Act may be instituted by any person duly authorised in writing by the board or the director in this behalf.

(3) All fines and compounding fees recovered from an offender shall be credited to State revenues and a grant equivalent to such amount shall be paid to the board.

29. Appeals.—An appeal shall lie to the Director of Industries of the State against an order passed by the Collector under this Act and a second appeal shall lie to the State Government.

THE SCHEDULE

(Proviso to section 21)

Minimum fee for stamping: One pie per yard subject to a maximum of three pies per piece.

STATEMENT OF OBJECTS AND REASONS

The handloom industry is in a most unorganised state and cannot survive on the internal market alone. Unless we export quality goods, our export market will be nil. It is necessary to organise the industry, control production, standardise the cloth for export with reference to fixed specifications and allow export of only such cloth. In order to meet the competition from Mills' goods, both Indian and foreign special concessions to those who produce cloth for export are absolutely necessary.

S. V. RAMASWAMY.

BILL NO. 83 OF 1952

A Bill to provide for the appointment of persons to the Office of Kazi and for performing and keeping a record of marriages and for the appointment of Tribunals for trying and deciding cases of divorce and dissolution of marriage amongst Muslims.

Be it enacted by Parliament as follows:—

1. Short title, commencement and extent.—(1) This Act may be called the Muslim Kazis Act, 19 .

(2) It shall come into force at once.

(3) It extends to the whole of India.

2. Appointment of Kazis and Tribunals.—(1) In accordance with the provisions contained in this Act State Governments shall appoint persons with proper qualifications as Kazis for presiding at Muslim marriages and

performing other religious ceremonies, at which the presence of Kazi is necessary according to Muslim Law and usage. The State Governments shall further appoint Tribunals for deciding suits relating to divorce and dissolution of marriages amongst Muslims.

(2) For the purpose of selection and nomination of candidates for the posts of Kazis and for the membership of the Tribunals, the State Government shall appoint in each District, a committee, called the District Committee.

3. Composition, term and duties of District Committees.—(1) The District Committee shall consist of the following members:—

(a) The District Judge of the District who shall also be the president of the District Committee.

(b) The Collector or the Deputy Commissioner of the District who shall also be the convenor of the District Committee.

(c) One Muslim Vakil or Advocate elected by the Muslim Vakils and Advocates of the District.

(d) Five members to be elected by the Muslim members of the Municipal Boards, Notified areas, and Town Areas of the District.

(e) Two members to be elected by the Muslim members of the District Board of the District.

(f) One Shia Alim elected by the Shia Ulemas of the District mentioned in Schedule B.

(g) Two Ulemas elected by the Ulemas of the District holding certificates of Colloques mentioned in Schedule 'A' to this Act.

(h) All the Muslim members of the Legislative Assembly if any and Legislative Council if any and Parliament representing that District.

(2) The members shall hold office for a period of seven years but in case of a seat falling vacant during this period the vacancy shall be filled up by the election of a member from the class to which the late member belonged and such member shall hold office for the remaining period.

(3) The quorum of the District Committee shall be seven.

(4) The duties of the District Committee shall be:

(a) to make recommendations to the State Government about the number of Kazis necessary for the District and their proposed jurisdictions.

(b) to make recommendations to the State Government about the number of Tribunals for trying divorce and dissolution of marriage suits and their proposed jurisdictions.

(c) to recommend to the Local Government the names of persons, with requisite qualifications, who are to be appointed as Kazis and as members of the Tribunals.

(d) to supervise the work of Kazis and Tribunals of the District and to make occasional reports about their work to the Government.

4. Procedure for the appointment and removal of Kazis.—(1) The Kazi shall be appointed by the State Government on the recommendation of the District Committee, and shall not be removable from his office, but for incapacity or misconduct in the discharge of his public duties, or acts

of profligacy in his private conduct, proved to the satisfaction of the State Government.

(2) The District Committee shall report to the State Government every instance in which it may appear to them that any Kazi in the District is incapable, or in which it may be proved to their satisfaction that he has been guilty of negligence or misconduct in the discharge of his public duty or of acts of profligacy, in his private conduct.

5. Qualifications for the post of a Kazi.—(1) For an appointment to the post of a Kazi a person must be educated, honest, conscientious and well versed in questions relating to marriages, divorce and dissolution of marriages:

Provided that for appointment to the Tribunal for dissolution of marriages he shall have obtained a certificate from any of the Islamia Schools mentioned in Schedule 'A' to this Act, if he is a Sunni or from any Islamia Schools mentioned in Schedule 'B' of this Act, if he is a Shia. The certificate would be to the effect that he is well versed in the matters of marriages and divorce.

(2) In making appointments to the post of a Kazi, preference shall be given to a person who in addition to the qualification mentioned in sub-section (1) is held in esteem by the Muslims of the city, town or purganah in which he is to hold office, due to the status of his family or belongs to a family in which the post of Kazi had been hereditary in the past.

6. Appointment, qualifications, and removal of Naib Kazis.—(1) Subject to the approval of the District Committee a Kazi shall have power to appoint one or more Naib Kazis, provided that in case the Kazi is a Sunni he shall employ as many Shia Naib Kazis as necessary and similarly if the Kazi is Shia then he would employ the necessary number of Sunni Naib Kazis.

(2) A Naib Kazi shall be required to be literate and conversant with questions relating to marriages.

(3) A Kazi shall have power to remove his Naib Kazi.

7. Maintenance of records of marriages and suits.—(1) The Kazi either by himself or through his Naib Kazi shall keep a regular record of marriages taking place within his jurisdiction, giving the names of the parties to the marriage; of the guardian of the marriage—if any—of the vakil—if any, of the witnesses to the marriage, and of the person who performed the *nikah* ceremony, and the record shall be signed by all of them. The age of the parties, the fact as to whether the marriage is a first or second one, the amount of dower—with details of prompt and deferred, the date of marriage and the date of entry shall also be recorded. A copy of the record shall be given to each of the parties.

(2) Subject to the provisions of sub-sections (2) and (3) of section 8 when an entry is made in the record of Kazi regarding marriages which have not been performed by the Kazi or one of his Naibs all the details mentioned in sub-section (1) of this section shall be filled up but the record may be signed by the parties and their guardians if any, only:

Provided that before making the entries the Kazi shall satisfy himself as to the factum of marriage, and would make remarks to the effect in the register as to whether he considers it to be genuine or otherwise. For this purpose the Kazi may get the record signed by such other persons as were present at the time of marriage.

(3) The Kazi who is a member of the Tribunal for dissolution of marriages shall further keep record of the suits tried by the Tribunal giving details in accordance with the rules framed by the State Government in this behalf.

8. Marriage fees and the right of parties to a marriage.—(1) The fees for every marriage shall be rupees five. The parties to the marriage, however, may give any larger amount to the Kazi at their option.

(2) If in spite of invitation, a Kazi fails to attend a marriage, and the marriage is celebrated in their absence, or their presence is not required due to their being Shia while the parties celebrating the marriage are Sunni or due to their being Sunni while the parties are Shia, the parties to the marriage and their guardians, if any, shall be entitled to get entries made in the record of the Kazi without payment of any fee within fifteen days of the marriage, and with the payment of rupees five thereafter:

Provided that no entries shall be made after the lapse of thirty days after the marriage.

(3) If a marriage is celebrated without the information given to Kazi or Naib Kazi by some other person the parties to the marriage and their guardians, if any, shall be entitled to get entries made in the record of the Kazi after payment of rupees ten within fifteen days of marriage and with payment of twenty rupees thereafter:

Provided that no entry shall be made after the lapse of thirty days of the marriage.

(4) Any person placing reliance or leading evidence in any civil or criminal suit in respect of a marriage which was celebrated after this Act comes into force, and which is not entered in the register of the Kazi, shall have to pay a penalty of rupees thirty before he can be allowed to place reliance on or lead evidence in respect of such marriage.

9. Composition and functions of the divorce and dissolution of Marriage Tribunals.—(1) The Tribunal which shall be appointed to decide the divorce and dissolution of marriage cases shall consist of the following members :—

- (i) one Kazi out of the Kazis of the District;
- (ii) two Sunni Muslim Vakils or Advocates from the Muslim Vakils or Advocates of the District;
- (iii) two Ulemas from the Ulemas of the District holding certificate of any of the Schools mentioned in Schedule 'A' to this Act; and
- (iv) two Shia Ulemas of the District holding certificates mentioned in Schedule 'B' to the Act.

(2) The District Committee shall make recommendations to the State Government of names of the members of the Tribunals according to subsection (1) and the State Government shall make the appointments.

(3) The Tribunal shall try and decide suits relating to marriages, divorce and dissolution of marriages falling within its jurisdiction.

10. Procedure for obtaining a divorce or dissolution of marriage.—(1) Any person desirous of having a divorce or getting a marriage dissolved, or getting a declaration to that effect may file a plaint in accordance with

the provisions of the Code of Civil Procedure, 1908, before the Kazi or a person appointed by the Kazi for receiving such plaints.

(2) A fee of rupees thirty shall have to be deposited with each plaint. This sum shall be utilized for the expenses of the Tribunal and shall be at the disposal of the Kazi.

(3) The Kazi in consultation with the Tribunal shall fix dates for the filing of written statement and of the hearing of the suit.

(4) The summons on the defendant and on the witnesses shall be served through the Civil Court of the Lowest Grade having jurisdiction in the area, and the parties concerned shall have to deposit process fee and diet money in accordance with the rules of the Civil Court.

(5) The quorum of the Tribunal shall be three:

Provided that at least the same three members shall hear the suit throughout:

Provided further that in case the Kazi is a Sunni and parties to the suit are Shia, one of the Shia Alims will occupy the place of the Kazi, and similarly when the Kazi is a Shia and the parties to the suit are Sunni, one of the Sunni Alims will occupy the place of the Kazi.

(6) The decisions of the suit shall be according to the opinion of the majority and in case of equality of votes the Kazi or the Sunni or Shia Alim acting in place of the Kazi shall have a second and casting vote.

(7) The majority shall write the judgment and sign it, but the final order shall be signed by only one member, preferably by the Kazi or Sunni or Shia Alim acting as Kazi if he happens to be with the majority.

11 Term of appointment of members of the Tribunal.—(1) The members of the Tribunal will be honorary, and shall be appointed for a period of five years, but would be eligible for re-appointment after the expiry of their term:

Provided that if during the hearing of the suit the period of a Tribunal or of one of its members comes to a close, even then they will have a right to finish the suit or suits, but they will not be entitled to hear new suits.

(2) If during the term of the Tribunal a vacancy falls, due to the **resignation, retirement, death or other cause, it would be filled up by** nomination according to section 9 from the group from which such member had been nominated:

Provided that so long as the number of the members of the Tribunal does not fall below three, nothing done by the Tribunal shall be deemed to be invalid merely by the reason that the number of the members of the Tribunal was at any time less than seven.

12. Powers of the Tribunal in respect of the dower-debt.—The Tribunal shall have no power to pass any judgment in respect of any dower-debt except that it may record a compromise between the parties, in respect of renunciation of dower-debt or part thereof, in lieu of dissolution of marriage.

13. Remedy against the decision.—(1) Any one dissatisfied with the judgment and decree of the Tribunal may apply to the Kazi to send the record to the District Judge for obtaining his opinion thereon.

(2) On the presentation of such an application the Kazi shall send the whole record to the District Judge with a request to give his opinion thereon **both on matters of fact and of law.**

(3) The District Judge after notice to the parties and hearing such of them as want to be heard shall give his opinion and send back the record to the Kazi, and the Kazi shall pass judgment and decree according to the opinion of the District Judge:

Provided that the District Judge may send the record to any one of his subordinate Courts having the power of hearing appeals under the Code of Civil Procedure, 1908, to give its opinion, and the opinion of such court shall have the same effect as the opinion of the District Judge.

14. Remedy against the decision of the District Judge.—(1) Any party dissatisfied with the opinion of the District Judge may apply to the Kazi for sending the record of his case to the High Court for opinion.

(2) On the presentation of such an application the Kazi shall send the record with the opinion of District Judge to the High Court.

(3) The High Court shall after notice to the parties give its opinion on the same points on which it hears second appeals under section 100 of the Code of Civil Procedure, 1908.

(4) The procedure provided by the Code of Civil Procedure, 1908, for the hearing of the second appeals from the decree shall be followed for the disposal of these cases.

(5) On receipt of the opinion of the High Court the Kazi shall pass a decree in accordance with the opinion of the High Court.

15. Proceedings before the Tribunal.—All the proceedings before the Tribunal shall be in accordance with the Code of Civil Procedure, 1908, and the Tribunal for purposes of trial of suits under this Act shall be deemed to be a Court.

16. Power of the State Government to make rules.—(1) The State Government may make rules consistent with this Act for the purpose of carrying out the provisions of this Act

(2) In particular, and without prejudice to the generality of the foregoing power, the State Government shall have power to make rules with reference to the following matters:—

(a) For the selection of the members of the District Committee under section 3.

(b) For the selection and nomination of the Kazis and members of the Tribunal under sections 4 and 9.

(c) For the holding of the meetings of the District Committee and the procedure to be adopted by the Committee.

(d) For the reports to be made by the District Committee to the State Government.

17. Power of the State Government to alter the Act.—The State Government shall have power to make alterations in this Act in the following matters:—

(a) Making necessary amendments, alterations or additions to the entries required to be made in the records under section 7

(b) Increasing or decreasing the fees prescribed in section 8 of the Act.

(c) Making necessary amendments, alterations in the list of Schools or Colleges given in Schedule 'A' to this Act.

18. Repeal of Act XII of 1880.—The Kazis Act, 1880 (Act XII of 1880) is hereby repealed.

SCHEDULE A

(Vide sections 5 and 9)

List of Schools of Sunnis

Darul Ulum, Deoband.
 Muzahirul Ulum, Saharanpur.
 Madarsah Khankah Imdadia, Thana Bhawan.
 Madarsah Arabic, Amroha.
Madarsah Arabic, Gulauti.
 Madarsah Arabic, Budaon.
 Madarsah Manzarul Islam, Bareilly.
 Madarsah Illahiat, Kanpur.
 Madarsah Arabic, Farangi Mahal, Lucknow.
Arabic Madarsah, Allahabad.

SCHEDULE B

(Vide sections 5 and 9)

List of Schools of Shias

Madrasetul Waezeen, Lucknow.
 Madrasa of Shia Theology, Amroha.

STATEMENT OF OBJECTS AND REASONS

According to Muslim Law the decree of Kazi duly appointed by the State is necessary for certain socio-religious and religious matters such as dissolution of marriages. In addition to these the Kazi is to preside and perform certain ceremonies such as the marriage ceremony and is to conduct the Juma and Id prayers. After the settlement of Muhammadans in India, Kazis were appointed by the State for the cities, principal towns and in the parganahs for performing all the duties allotted to them by the Muslim Law. On the inception of the British Rule their status was recognised by the British Government also. Regulation XXXIX of 1793 was **the first one in this connection.** It was intended to provide for the recognition and appointment of Kazis and Kazi-ul-Kuzzat.

Gradually similar Regulations and Acts were passed for other provinces also. In addition to the Kazis, however, there used to be Hindu and Mohammadan Law Officers attached to the courts to help those courts in the administration of Hindu and Mohammadan Law respectively—the courts at the time having had no training in those branches of law. This had become necessary as the East India Company was gradually transferring the administration of justice from the hands of Indians to those of the English Judges—and was thus necessarily a transitory stage. It appears **that in 1864 Hindu and Mohammadan Law Officers were deemed to have served their purpose in having given the necessary training to the English Judges and having produced sufficient quantity of legal precedent to guide future courts.** They were no more required and were thus removed by Act XI of 1864. But along with the Hindu and Mohammadan Law Officers, the Regulations and Acts relating to Kazis were also repealed.

The Late Sir Ahmad Khan brought a Bill in the Legislative Council in 1880, which was passed as Act No. XII of 1880 and was named Kazis

Act. That Act authorized the Local Government to appoint Kazis for any particular area on the desire of the Muslim community living in that area, but gave him absolutely no powers.

Thus it is only to meet a well recognized and old standing need of the Muslim community that this Bill is being introduced. Its scope is very restricted as it gives much smaller powers to the Kazi than the functions that were allotted to him under the Muslim Law or were even recognized by the earlier British Legislature. It deals chiefly with the registration of marriage, which is effected by the Kazis and for the disposal of suits relating to marriage, divorce and dissolution of marriages for which a tribunal consisting of a Kazi, an *Alim* and a *Vakil* has been proposed. As the Muslim personal law in this matter is very strict, provisions of appeals to the District Judge and the High Court have been effected in the form of opinion from those courts. While this would not very much alter the procedure in Indian Courts it would meet the requirements of Muslim Law, and it is expected that the long-felt want of the Muslim community would be met by this Bill.

MOHAMMAD AHMAD KAZMI.

BILL NO. 70 OF 1952

A Bill to provide for protection, maintenance, custody, education and Employment of children.

WHEREAS it is expedient and necessary to provide for protection, maintenance, custody, education and employment of uncared for children and young persons so as to save them from moral and material abandonment and exploitation;

BE it enacted by Parliament as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Children's Protection Act, 1952

(2) It extends to the whole of India.

(3) It shall come into force at once.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(a) "a child" means any person not above the age of fourteen;

(b) "parent" means father or mother including a step-father and step-mother;

(c) "guardian" means any person who is, for the time being, in actual charge, custody or control of the child or young person;

(d) "young person" means any person who is above fourteen years of age but not above eighteen;

(e) "prescribed" means prescribed by rules made under this Act.

3. Interrogation of children or young persons loitering, begging or vagabonding in public places.—It shall be lawful for any Magistrate, a Member of the State Legislature or Parliament, a police constable and any other person as may be prescribed to interrogate any child or young person found loitering or begging or vagabonding in any public street, or at any railway station or in or near any public place, to bring him before a Magistrate.

4 Registration of uncared for children or young persons.—If it is found that a child or a young person is not being maintained or looked after or

otherwise provided for in any reasonable manner or is being used for earning money by any means other than regular employment, he shall at once be registered as an uncared for child or young person.

5. Release of children or young persons on parent or guardian giving an undertaking.—In every case where the child or young person has a parent or a proper guardian prepared to look after him, the child or young person may be released on such parent or parents or guardian or guardians giving an undertaking in writing, with one respectable surety, that—

(i) the child or the young person will not be permitted to loiter any further,

(ii) he will be provided with adequate food and clothing at the house and supervised,

(iii) he shall be enrolled as a student in some school as far as possible, and

(iv) if the circumstances of the family demand that he should be employed, he is in regular employment of some person whose name and status shall be intimated to a police station from time to time together with the wages or salary received and a statement of the nature of work the child or the young person is required to do.

6. Defaulting parent or guardian to execute a bond.—The parent or guardian, who fails to carry out or act upto the above undertaking in any particular, may be required to execute a bond in a sum not exceeding five hundred rupees with one surety in the like sum.

7. Penalty for subsequent failure by parent or guardian.—On subsequent failure, the parent or guardian besides being liable to be punished with forfeiture of the bond, shall be liable to fine which may extend to two hundred fifty rupees.

8. Provincial Government to make arrangements for education, employment and care of uncared for children or young persons.—Every child or young person, for whom no possibility of adequate maintenance and care appears available, shall be registered as an uncared for child or young person, as the case may be, and it shall be the duty of the State Government, with the assistance of the Central Government if possible to make adequate arrangements for his education, employment and care.

9. Return of enrolled child or young person to his parent or guardian.—Any child or young person so enrolled and admitted in a public institution for purposes of employment, education or otherwise, may be handed over to his parent or guardian on his paying the cost of his maintenance to Government and depositing a sum not exceeding five hundred rupees as an undertaking to look after the child or young person adequately in the future.

10. Right of Government to recover expenses in fit cases.—It shall be lawful for any Provincial or State Government to recover, in a fit case, the expenditure incurred on the education and maintenance of the child or the young person, wherever his parent, guardian or a near relation is capable of paying the same.

11. Arrest of escaped children or young persons.—It shall be lawful for any police officer or constable to arrest without a warrant any child or young person who has escaped from the public institution to which he was admitted.

12. A child or young person of criminal tendencies to be kept separately.—A child or a young person guilty of more than one attempt to run

away from such an institution, or one who has manifested any definite criminal tendencies, shall be kept separately from other children.

13. Employment etc. of a child or young person to contribute towards his maintenance and education.—It shall be lawful for any State or Central Government to put such a child or a young person to any employment, teach him any course of study or vocation or calling or in any other manner to utilize him so as to, by his efforts and work, contribute towards his own maintenance and education.

14. Government not to make profit.—No Government shall, however, make any profit as a result of the work and labours of any child or young person admitted to State custody.

15. Power to make rules.—The Central Government may make rules for the purpose of giving effect to the provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

I believe it is the experience of everyone how children and young persons of all ages are found loitering in public streets, near cinema houses and theatres, at railway stations, and in public places without any work, very shabbily, if at all clad and living a life which is a matter of shame and disgrace to the whole Indian nation. Such valuable human material is not only being wasted on a very large scale but the fact that it is not possible to make any arrangements or provide for their education and maintenance or even supervision of any sort has contributed to encourage them at this early age to fall a prey to bad and unsocial habits so as to make them not only potential but often real enemies of society. The provisions in the above Bill are designed to meet this unbearable situation. The Bill does place upon the State and Central Governments the responsibility of looking after these children, but it is a responsibility which, I believe, no Government would like to avoid. The sooner it is recognized the better it would be for these innumerable children and young persons as well as the well-being and reputation of the Indian nation. I do not expect, if the provisions are properly enforced, the cost would be exorbitant. In any case the value of good results flowing from it will far exceed the cost borne by all the Governments.

We have rightly included the following in the Directive Principles of State Policy in the Constitution that we are adopting

"Article 39. The State shall, in particular, direct its policy towards securing—

* * * *

(f) that childhood and youth are protected against exploitation and against moral and material abandonment."

My Bill seeks to secure the early realization of this objective. I am aware that some States have Children's Acts. But so far as the purpose embodied in the above Bill is concerned they are a dead letter.

P. S. DESHMUKH

The following Bill was introduced in the House of the People on 21st July, 1952:—

BILL No. 88 OF 1952

A Bill further to amend the Central Silk Board Act, 1948

BE it enacted by Parliament as follows:—

1. Short title.—This Act may be called the Central Silk Board (Amendment) Act, 1952.

2 Amendment of section 4, Act LXI of 1948.—In section 4 of the Central Silk Board Act, 1948 (hereinafter referred to as the principal Act), for clause (c) of sub-section (3), the following clause shall be substituted, namely :—

“(c) two persons elected by the members of the House of the People from among themselves and one person elected by the members of the Council of States from among themselves”.

3. Amendment of section 6, Act LXI of 1948—In section 6 of the principal Act, in sub-section (1), for the words “The Board shall elect from among its members”, the words “The Central Government shall appoint from among the members of the Board” shall be substituted.

4. Amendment of section 13, Act LXI of 1948.—In section 13 of the principal Act, in clause (b) of sub-section (2), the words “the election of the Vice-Chairman of the Board; and” shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The silk industry in India has been passing through a series of vicissitudes. The Government of India consider that in order to place this industry on a stable foundation it is necessary that the Government should have a more effective voice in the control exercised over the silk industry by the Central Silk Board.

As the Act at present stands, the control of the Central Government is exercised by the Central Silk Board, and the Minister for Commerce and Industry is the Chairman of the Board. The Secretary of the Board is appointed by Government in consultation with the Board. The Chairman is also a Member of the Standing Committee, but by reason of the fact that the Minister cannot give his close personal attention to this matter, co-ordination of the activities of the Board with effective control by the Ministry is not possible, which is not satisfactory. It seems desirable, considering the difficult circumstances in which this industry is placed, that the Government should give the question of the well-being of this industry close and continuous attention. It is felt that if the Vice-Chairman is a Government Official appointed by Government, he could take greater interest in the work of the Board. Besides being the Vice-Chairman, he will also be a Member of the Standing Committee, and such attention would undoubtedly be necessary during the next five or six years until the industry gets stabilised. Section 6 is therefore amended empowering the Government to appoint from among the Members of the Board a Vice-Chairman. Amendment to section 13 is a consequential one.

Advantage is taken of this opportunity to amend section 4 so as to provide separately for the representation on the Board of the Council of States.

T. T. KRISHNAMACHARI,

NEW DELHI;

The 14th July, 1952

M. N. KAUL,

Secretary